

State Administration Appropriations Committee

**Tuesday, April 11, 2006
9:30 a.m. – 12:00 p.m.
Room 12 HOB**

REVISED



The Florida House of Representatives

Fiscal Council

State Administration Appropriations Committee

Allan G. Bense
Speaker

Kimberly (Kim) Berfield
Chair

Agenda

Tuesday, April 11, 2006

Time: 9:30 a.m. – 12:00 p.m.

Location: Room 12 HOB

- I. Call to Order
- II. Roll Call
- III. Opening Remarks
- IV. Consideration of the following bill(s):
 - HB 11 CS by Robaina – Indoor Smoking Places
 - HB 771 CS by Carroll - Cosmetology
 - HB 911 CS by Bullard – Use of State Facilities as Emergency Shelters
 - HB 1009 by Cretul – Real Estate Profession Regulation
 - HB 1091 by Ambler – Insurer Insolvency
 - HB 1113 CS by Lopez-Cantera – Insurance Agents
 - HB 1425 by Brutus – Advisory Council on Condominiums
 - HB 1435 by Harrell – Division of Emergency Management of the Department of Community Affairs
 - HB 7153 by Detert/Economic Development, Trade & Banking Committee – Financial Entities and Transactions
- V. Closing Remarks
- VI. Adjournment



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 11 CS Indoor Smoking Places

SPONSOR(S): Robaina and others

TIED BILLS: None

IDEN./SIM. BILLS: HB 317 1st Eng.; CS/SB 600; CS/SB 1536

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	15 Y, 1 N, w/CS	Morris	Liepshutz
2) State Administration Appropriations Committee		Rayman 	Belcher 
3) Commerce Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

For purposes of ensuring compliance with provisions of the Clean Indoor Air Act limiting those indoor work areas where smoking is allowed, Florida law requires certain alcoholic beverage establishments that allow smoking and that also serve food [those designated as stand-alone bars] to annually submit to the Division of Alcoholic Beverages and Tobacco [Division] in the Department of Business and Professional Regulation (DBPR) an affidavit that certifies compliance with a 10 percent threshold limitation for food sales. Every three years after the initial designation as a stand alone bar, the licensee is required to submit an "agreed upon procedures report" prepared by a Florida Certified Public Accountant that attests to the licensee's compliance with the food sales limitation for the preceding 36-month period.

The bill repeals the requirement that a stand-alone bar submit a CPA-prepared agreed upon procedures report to the Division every three years after receiving the designation as a stand-alone bar. The bill retains the requirement that a stand-alone bar submit an affidavit to the Division certifying compliance with the food sales limitation on an annual basis and provides additional penalties for knowingly making a false statement on the affidavit.

Further, the bill clarifies that a proprietor or other person in charge of an enclosed indoor workplace may not permit smoking in that workplace unless the workplace falls within one of the exceptions created in s. 386.2045, Florida Statutes. The bill further clarifies that the word "person" when used in chapter 386, has the same meaning as in s. 1.01(3), Florida Statutes.

The bill does not have any fiscal impact on state or local government.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—This bill eliminates a requirement that certain alcoholic beverage establishments [stand-alone bars] submit an “agreed upon procedures report” prepared by a Florida CPA to the Division in the DBPR.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Article X, Section 20 – Smoking in Enclosed Indoor Workplaces

At the November 2002 General Election, voters approved Constitutional Amendment No. 6, to prohibit tobacco smoking in enclosed indoor workplaces. The stated purpose of this constitutional revision, codified as s. 20, art. X, Florida Constitution, was to protect people from the health hazards of second-hand tobacco smoke by prohibiting workplace smoking. The constitutional amendment provided limited exceptions to the prohibition on indoor smoking including an exception for “stand-alone bars”. The constitutional amendment required the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” Implementing legislation, Chapter 2003-398, LOF, was subsequently enacted by the 2003 Legislature.

Stand-Alone Bars

The constitutional amendment defined a stand-alone bar to mean:

...any place of business devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, *if any, is merely incidental* to the consumption of any such beverage; and that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue. [Emphasis supplied]

Section 561.695, Florida Statutes, created three specific requirements for a stand-alone bar. First, a stand alone bar must be “devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises.” Second, the serving of food, if any, must be “merely incidental” to the consumption of alcoholic beverages. Third, the business must not be “located within, [or] share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue.”

An important caveat of the stand-alone bar definition is the requirement that the serving of food must be “merely incidental” to the consumption of alcoholic beverages. Section 561.695(5), F.S., defines “merely incidental” as a limit that a stand-alone bar derive no more than 10 percent of its gross revenue from the sale of food.¹ The Division is authorized, pursuant to s. 561.695(7), F.S., to audit the records of a stand-alone bar as necessary to ensure compliance. Florida law requires stand-alone bars to annually submit to the Division in the DBPR an affidavit that certifies compliance with a 10 percent

¹ This section also prohibits stand-alone bars from serving free-food, but does allow customary bar snacks to be served without charge.

threshold limitation for food sales. Every three years after the initial designation as a stand alone bar, the licensee is required to submit an “agreed upon procedures report” prepared by a Florida Certified Public Accountant that attests to the licensee’s compliance with the food sales limitation for the preceding 36-month period.

CPA Agreed Upon Procedures Reports

Following passage of the 2003 implementing legislation, the Florida Institute of Certified Public Accountants (FICPA) assigned a task force of CPAs that practice in the area of tax administration to review and comment on the legislation and the DBPR proposed rules. The FICPA has expressed concern regarding the proposed rules relating to the required agreed upon procedures report.

According to the FICPA, an “agreed upon procedures report” is defined in section 201 of the Attestation Standards of the American Institute of Certified Public Accountants [AICPA] as:

An agreed-upon procedures engagement is one in which a practitioner is engaged by a client to issue a report of findings based on specific procedures performed on subject matter. The client engages the practitioner to assist specified parties in evaluating subject matter or an assertion as a result of a need or needs of the specified parties. Because the specified parties require that findings be independently derived, the services of a practitioner are obtained to perform procedures and report his or her findings. The specified parties and the practitioner agree upon the procedures to be performed by the practitioner that the specified parties believe are appropriate. Because the needs of the specified parties may vary widely, the nature, timing, and extent of the agreed-upon procedures may vary as well; consequently, the specified parties assume responsibility for the sufficiency of the procedures since they best understand their own needs. In an engagement performed under this section, the practitioner does not perform an examination or a review, as discussed in section 101, and does not provide an opinion or negative assurance. Instead, the practitioner’s report on agreed-upon procedures should be in the form of procedures and findings.

As a consequence of the role of the specified parties in agreeing upon the procedures performed or to be performed, a practitioner’s report on such engagements should clearly indicate that its use is restricted to those specified parties.

Further, Section 101 of the Attestation Standards of the AICPA defines an “examination” in which an opinion is given as:

In an attest engagement designed to provide a high level of assurance (referred to as an examination), the practitioner’s objective is to accumulate sufficient evidence to restrict attestation risk to a level that is, in the practitioner’s professional judgment, appropriately low for the high level of assurance that may be imparted by his or her report. In such an engagement, a practitioner should select from all available procedures—that is, procedures that assess inherent and control risk and restrict detection risk—any combination that can restrict attestation risk to such an appropriately low level.

It is relevant to note that the Florida Board of Accountancy, which is the governing Board for Florida CPAs, adopts the AICPA standards into their administrative rules.²

² 61H1-20.0099, FAC – Standards for Attestation Engagements reads in part: “Standards for Attestation Engagements” shall be deemed and construed to mean Statements on Standards for Attestation Engagements published by the American Institute of Certified Public Accountants...”

According to the FICPA, in an agreed-upon procedures engagement or report, a CPA does not render an opinion regarding the sufficiency of the records provided by the client, including the accuracy and completeness of the records. In the context of the statute and rules, a CPA could only certify that the records provided by the stand-alone bar to a CPA reflect a stated percentage of gross food sales. The FICPA maintains that a Florida CPA could be disciplined by the Board of Accountancy for a violation of professional standards if, in the course of preparing the report, the CPA observes irregularities in the client's records, e.g., that the client is withholding pertinent records from the CPA, or the CPA determines that the client may have committed fraud or other malfeasance such as tax evasion and does not note them in the report. Further, the FICPA has expressed the concern that what the CPA is attesting to may not actually meet the Legislature's original expectation.

The FICPA maintains that the statutes and rules do not adequately address the licensee's required record retention and other internal control procedures while CPA standards of professional conduct require great specificity regarding the form in which records must be kept, e.g. whether a CPA can rely upon records maintained in an electronic format. Further, the FICPA is concerned that the statutes or rules do not adequately identify what specific steps or procedures are required by the CPA when addressing the lack of internal controls and the resultant reliability of the records.

The FICPA believes that a CPA's performance of an agreed upon procedures report under the current rules may likely be a violation of professional standards, and, consequently, the FICPA will advise its CPA members to refrain from performing the service for stand-alone bars.

Smoking Violations by Patrons, Employees and Licensees

A Division of Administrative Hearings (DOAH) decision has raised concerns regarding whether the DBPR has sufficient authority to sanction the proprietor or other person in charge of an enclosed indoor workplace with a violation of the act, if a person other than the proprietor or other person in charge of the location is smoking. Section 386.204, F.S., the substantive smoking prohibition, provides that a person may not smoke in an enclosed indoor workplace. Section 386.207(3), F.S., requires that the DBPR or the DOH, upon notification of observed violations of the act, issue to the proprietor or other person in charge of the enclosed indoor workplace a notice to comply with the act and establishes fines for subsequent violations of the act.

In *DBPR v. Old Cutler Oyster Co., Inc., d/b/a Old Cutler Oyster Co.*, DBPR attempted to discipline Old Cutler Oyster Co., an alcoholic beverage licensee, for permitting several patrons to smoke in the licensed premises in violation of s. 386.204, F.S. The licensee did not hold a stand-alone bar designation under s. 561.695, F.S. The Administrative Law Judge (ALJ), in his Recommended Order, held that there is no requirement in the statute that a proprietor or other person in charge of an enclosed indoor workplace must take any specific action when he or she observes a patron (or other non-employee) smoking in the enclosed indoor workplace. The ALJ also questioned whether the civil penalties in s. 386.207(3), F.S., which may be assessed against "the person" who fails to comply with a previously issued "notice to comply," apply to corporate or other non-human entities. The ALJ held that, in the context of s. 386.207(3), F.S., the term "person" appears to be limited to an individual human being. The Recommended Order did not reference the rule of statutory construction in s. 1.01, F.S., which provides that, where the context permits, the term person "includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations."

The division rejected the ALJ's determination that the term "person" did not include a corporation. However, due to the criteria and limitations in s. 120.57(1)(I), F.S., for agency review of an ALJ's findings of fact, conclusions of law, and recommended disposition, the division adopted the recommendations of the ALJ and dismissed the case.

The DOAH decision in *Old Cutler Oyster Co., Inc.*, is also relevant to the Department of Health's (DOH) enforcement of the act. It creates uncertainty regarding the extent to which DOH can sanction proprietors and persons in charge of an enclosed indoor workplace for smoking violations by patrons or other non-employees.

Old Cutler Oyster Co., Inc., did not address the issue of whether the division can sanction an alcoholic beverage licensee under the division's disciplinary authority in s. 561.29, F.S., which authorizes discipline of alcoholic beverage licensees for violations of any law in this state or permitting another person on the licensed premises to violate the laws of this state or the United States, and for maintaining a nuisance on the licensed premises. Although the licensee in *Old Cutler Oyster Co., Inc.*, is an alcoholic beverage licensee, the division did not seek to discipline the licensee pursuant to s. 561.29, F.S.

Penalty Provisions

Section 386.207(3), F.S., provides penalties for violations of the Clean Indoor Air Act by proprietors or persons in charge of an enclosed indoor workplace. The penalty for a first violation against a person who fails to comply with a previously issued "notice to comply" is a fine of not less than \$250 and not more than \$750.

Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides penalties in the amount of not more than \$100 for a first violation and not more than \$500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the Clean Indoor Air Act before the implementation of the constitutional smoking prohibition.

Signage Requirement

Section 386.206(1), F.S., requires that any person in charge of an enclosed indoor workplace who was required before the adoption of the smoking ban in the State Constitution to post signage regarding designated smoking areas must now post signage stating that smoking is not permitted. Section 386.206(5), F.S., provides that this requirement expires on July 1, 2005.

EFFECT OF PROPOSED CHANGE

CPA Agreed Upon Procedures Reports

This legislation repeals the requirement that a stand-alone bar submit a CPA-prepared agreed upon procedures report to the Division every three years after receiving the designation as a stand-alone bar. The legislation retains the requirement that a stand-alone bar submit an affidavit to the Division certifying compliance with the food sales limitation on an annual basis.

The bill creates a new penalty provision which provides that a vendor's *alcoholic beverage license* may be subject to revocation if the vendor *knowingly* makes a false statement on the annual affidavit required by s. 561.695(5), F.S. Moreover, the Division maintains the authority to conduct compliance audits as deemed necessary pursuant to s. 561.695(7), F.S.

Smoking Violations by Patrons, Employees and Licensees

To clarify the prohibitions and responsibilities relating to smoking in indoor workplaces, the bill amends s. 386.204, F.S., to specify that a proprietor or other person in charge of an enclosed indoor workplace may not permit another person to smoke in the workplace. The bill does not, however, specify what action a proprietor or other person in charge of the workplace must take when a violation occurs. The bill also amends s. 561.695, F.S., to specify that an alcoholic beverage vendor may not permit smoking in the licensed premises unless it is designated as a stand-alone bar. The bill amends s. 386.203, F.S.,

to provide that the term "person" has the same meaning as in the rule of statutory construction in s. 1.01, F.S.

This bill clarifies that the penalties provided in s. 386.207(3), F.S., for violations of the Clean Indoor Air Act will apply to proprietors or other persons in charge of an enclosed indoor workplace. The penalty for a first violation against a person who fails to comply with a previously issued "notice to comply" is a fine of not less than \$250 and not more than \$750.

Signage Requirement

The bill amends s. 386.206, F.S., to delete an obsolete signage requirement which expired on July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 386.203, F.S., and creates a new subsection (7), which specifies that the term "person" has the same meaning as in the rule of statutory construction; makes technical and clarifying changes.

Section 2. Amends subsection (1) of s. 386.204, F.S., and creates a new subsection (2) to specify that a proprietor or other person in charge of an enclosed indoor workplace may not permit another person to smoke in the workplace.

Section 3. Amends subsections (2) and (4) of s. 386.2045, F.S., to conform cross references.

Section 4. Deletes subsections (1) and (5) of s. 386.206, F.S., to remove provisions regarding the posting of signs that expired on July 1, 2005.

Section 5. Amends s. 561.695, F.S., to prohibit smoking in a licensed alcoholic beverage establishment unless it is designated as a stand-alone bar; to provide a penalty for knowingly making a false statement on required affidavits; to delete the requirement for a CPA-prepared procedures report; and to make technical changes.

Section 6. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

changes to conform the language to that contained in HB 317 CS, which has already passed the House and awaits action in the Senate.

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CHAMBER ACTION

The Business Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to indoor smoking places; amending s. 386.203, F.S.; defining the term "person" for purposes of the Florida Clean Indoor Air Act; amending s. 386.204, F.S.; prohibiting a proprietor or other person in charge of an enclosed indoor workplace from permitting smoking in that workplace; amending s. 386.2045, F.S.; conforming cross-references; amending s. 386.206, F.S.; deleting obsolete provisions requiring that signs be posted in an enclosed indoor workplace; amending s. 561.695, F.S.; conforming cross-references; prohibiting a vendor from permitting smoking in a licensed premises unless it is designated as a stand-alone bar; providing a penalty for a vendor who knowingly makes a false statement on an affidavit of compliance; deleting a provision requiring that a vendor operating a stand-alone bar certify to the Division of Alcoholic Beverages and Tobacco that it derives only a certain percentage of its gross revenue from the sale of food; providing an effective date.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 386.203, Florida Statutes, is amended, present subsections (7) through (13) are renumbered as subsections (8) through (14), respectively, and a new subsection (7) is added to that section, to read:

386.203 Definitions.--As used in this part:

(5) "Enclosed indoor workplace" means any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include, without limitation, uncovered openings; screened or otherwise partially covered openings; or open or closed windows, jalousies, doors, or the like.

(a) A place is "predominantly" bounded by physical barriers during any time when both of the following conditions exist:

1.~~(a)~~ It is more than 50 percent covered from above by a physical barrier that excludes rain.~~—and~~

2.~~(b)~~ More than 50 percent of the combined surface area of its sides is covered by closed physical barriers. In calculating the percentage of side surface area covered by closed physical barriers, all solid surfaces that block air flow, except railings, must be considered as closed physical barriers. This section applies to all such enclosed indoor workplaces and enclosed parts thereof without regard to whether work is occurring at any given time.

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(b)~~(e)~~ The term does not include any facility owned or leased by and used exclusively for noncommercial activities performed by the members and guests of a membership association, including social gatherings, meetings, dining, and dances, if no person or persons are engaged in work as defined in subsection (13) ~~(12)~~.

(7) "Person" has the same meaning as in s. 1.01(3).

Section 2. Section 386.204, Florida Statutes, is amended to read:

386.204 Prohibition.--Except as otherwise provided in s. 386.2045:

(1) A person may not smoke in an enclosed indoor workplace,~~except as otherwise provided in s. 386.2045.~~

(2) A proprietor or other person in charge of an enclosed indoor workplace may not permit smoking in that enclosed indoor workplace.

Section 3. Subsections (2) and (4) of section 386.2045, Florida Statutes, are amended to read:

386.2045 Enclosed indoor workplaces; specific exceptions.--Notwithstanding s. 386.204, tobacco smoking may be permitted in each of the following places:

(2) RETAIL TOBACCO SHOP.--An enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, as defined in s. 386.203(9)~~(8)~~.

(4) STAND-ALONE BAR.--A business that meets the definition of a stand-alone bar as defined in s. 386.203(12)~~(11)~~ and that

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79 otherwise complies with all applicable provisions of the
80 Beverage Law and this part.

81 Section 4. Section 386.206, Florida Statutes, is amended
82 to read:

83 386.206 Posting of signs; requiring policies.--

84 ~~(1) The person in charge of an enclosed indoor workplace~~
85 ~~that prior to adoption of s. 20, Art. X of the State~~
86 ~~Constitution was required to post signs under the requirements~~
87 ~~of this section must continue to conspicuously post, or cause to~~
88 ~~be posted, signs stating that smoking is not permitted in the~~
89 ~~enclosed indoor workplace. Each sign posted pursuant to this~~
90 ~~section must have letters of reasonable size which can be easily~~
91 ~~read. The color, design, and precise place of posting of such~~
92 ~~signs shall be left to the discretion of the person in charge of~~
93 ~~the premises.~~

94 (1)(2) The proprietor or other person in charge of an
95 enclosed indoor workplace must develop and implement a policy
96 regarding the smoking prohibitions established in this part. The
97 policy may include, but is not limited to, procedures to be
98 taken when the proprietor or other person in charge witnesses or
99 is made aware of a violation of s. 386.204 in the enclosed
100 indoor workplace and must include a policy which prohibits an
101 employee from smoking in the enclosed indoor workplace. In order
102 to increase public awareness, the person in charge of an
103 enclosed indoor workplace may, at his or her discretion, post
104 "NO SMOKING" signs as deemed appropriate.

105 (2)(3) The person in charge of an airport terminal that
106 includes a designated customs smoking room must conspicuously

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post, or cause to be posted, signs stating that no smoking is permitted except in the designated customs smoking room located in the customs area of the airport. Each sign posted pursuant to this section must have letters of reasonable size that can be easily read. The color, design, and precise locations at which such signs are posted shall be left to the discretion of the person in charge of the premises.

~~(3)-(4)~~ The proprietor or other person in charge of an enclosed indoor workplace where a smoking cessation program, medical research, or scientific research is conducted or performed must conspicuously post, or cause to be posted, signs stating that smoking is permitted for such purposes in designated areas in the enclosed indoor workplace. Each sign posted pursuant to this section must have letters of reasonable size which can be easily read. The color, design, and precise locations at which such signs are posted shall be left to the discretion of the person in charge of the premises.

~~(5) The provisions of subsection (1) shall expire on July 1, 2005.~~

Section 5. Section 561.695, Florida Statutes, is amended to read:

561.695 Stand-alone bar enforcement; qualification; penalties.--

(1) The division shall designate as a stand-alone bar the licensed premises of a vendor that operates a business that meets the definition of a stand-alone bar in s. 386.203 ~~(12)-(11)~~ upon receipt of the vendor's election to permit tobacco smoking in the licensed premises. A vendor may not permit smoking in the

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licensed premises unless it is designated as a stand-alone bar
under this section.

(2) Upon this act becoming a law and until the annual renewal of a vendor's license, a licensed vendor who makes the required election under subsection (1) may permit tobacco smoking on the licensed premises and must post a notice of the ~~such~~ intention at the same location at which the vendor's current alcoholic beverage license is posted. The notice must ~~shall~~ affirm the vendor's intent to comply with the conditions and qualifications of a stand-alone bar imposed pursuant to part II of chapter 386 and the Beverage Law.

(3) Only the licensed vendor may provide or serve food on the licensed premises of a stand-alone bar. Other than customary bar snacks as defined by rule of the division, the licensed vendor may not provide or serve food to a person on the licensed premises without requiring the person to pay a separately stated charge for the food that reasonably approximates the retail value of the food.

(4) A licensed vendor operating a stand-alone bar must conspicuously post signs at each entrance to the establishment stating that smoking is permitted in the establishment. The color and design of the ~~such~~ signs shall be left to the discretion of the person in charge of the premises.

(5) After the initial designation, to continue to qualify as a stand-alone bar the licensee must provide to the division annually, on or before the licensee's annual renewal date, an affidavit that certifies, with respect to the preceding 12-month period, the following:

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(a) No more than 10 percent of the gross revenue of the business is from the sale of food consumed on the licensed premises as defined in s. 386.203 (12) ~~(11)~~.

(b) Other than customary bar snacks as defined by rule of the division, the licensed vendor does not provide or serve food to a person on the licensed premises without requiring the person to pay a separately stated charge for food that reasonably approximates the retail value of the food.

(c) The licensed vendor conspicuously posts signs at each entrance to the establishment stating that smoking is permitted in the establishment.

The division shall establish by rule the format of the affidavit required by this subsection. A licensed vendor shall not knowingly make a false statement on the affidavit required by this subsection. In addition to the penalties provided in subsection (7), a licensed vendor who knowingly makes a false statement on the affidavit required by this subsection may be subject to suspension or revocation of the vendor's alcoholic beverage license under s. 561.29.

~~(6) Every third year after the initial designation, on or before the licensee's annual license renewal, the licensed vendor must additionally provide to the division an agreed upon procedures report in a format established by rule of the department from a Florida certified public accountant that attests to the licensee's compliance with the percentage requirement of s. 386.203(11) for the preceding 36 month period. Such report shall be admissible in any proceeding pursuant to s.~~

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~~120.57. This subsection does not apply to a stand alone bar if the only food provided by the business, or in any other way present or brought onto the premises for consumption by patrons, is limited to nonperishable snack food items commercially prepackaged off the premises of the stand alone bar and served without additions or preparation; except that a stand alone bar may pop popcorn for consumption on its premises, provided that the equipment used to pop the popcorn is not used to prepare any other food for patrons.~~

(6)~~(7)~~ The Division of Alcoholic Beverages and Tobacco shall have the power to enforce the provisions of part II of chapter 386 and to audit a licensed vendor that operates a business that meets the definition of a stand-alone bar as provided in s. 386.203(12)~~(11)~~ for compliance with this section.

(7)~~(8)~~ Any vendor that operates a business that meets the definition of a stand-alone bar as provided in s. 386.203(12)~~(11)~~ who violates the provisions of this section or part II of chapter 386 shall be subject to the following penalties:

(a) For the first violation, the vendor shall be subject to a warning or a fine of up to \$500, or both.†

(b) For the second violation within 2 years after the first violation, the vendor shall be subject to a fine of not less than \$500 or more than \$2,000.†

(c) For the third or subsequent violation within 2 years after the first violation, the vendor shall receive a suspension of the right to maintain a stand-alone bar in which tobacco smoking is permitted, not to exceed 30 days, and shall be

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219 | subject to a fine of not less than \$500 or more than \$2,000. ~~and~~
220 | ~~and~~

221 | (d) For the fourth or subsequent violation, the vendor
222 | shall receive a 60-day suspension of the right to maintain a
223 | stand-alone bar in which tobacco smoking is permitted and shall
224 | be subject to a fine of not less than \$500 or more than \$2,000
225 | or revocation of the right to maintain a stand-alone bar in
226 | which tobacco smoking is permitted.

227 | (8) ~~(9)~~ The division shall adopt rules governing the
228 | designation process, criteria for qualification, required
229 | recordkeeping, auditing, and all other rules necessary for the
230 | effective enforcement and administration of this section and
231 | part II of chapter 386. The division is authorized to adopt
232 | emergency rules pursuant to s. 120.54(4) to implement the
233 | provisions of this section.

234 | Section 6. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS


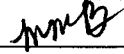
BILL #: HB 771 CS

Cosmetology

SPONSOR(S): Carroll

TIED BILLS:

IDEN./SIM. BILLS: SB 1630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	17 Y, 0 N, w/CS	Livingston	Liepshutz
2) <u>Community Colleges & Workforce Committee</u>	7 Y, 0 N, w/CS	Thomas	Ashworth
3) <u>State Administration Appropriations Committee</u>		Rayman 	Belcher 
4) <u>Commerce Council</u>			
5) _____			

SUMMARY ANALYSIS

Chapter 477, F.S., regulates the practice of cosmetology which is currently defined to include the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes. Under this practice act, a person could also obtain a specialty registration for more narrow professional services, such as manicuring, pedicuring, or facials. Practitioners may also be registered to practice the occupation of hair braiding, hair wrapping, or body wrapping. Qualifications for licensure as a cosmetologist include 1,200 hours of training at a Florida approved school of instruction and successful completion of the licensure examination. Applicants for registration, as opposed to licensure, must also complete approved training courses relating to their specialty or specific practice.

The bill:

- redefines "cosmetology" to include hair technician services, esthetician services, and nail technician services;
- allows qualified individuals who are authorized to practice, to be licensed as a hair technician, esthetician, nail technician or cosmetologist;
- amends the hair braiding course content requirements and increases the educational hours;
- revises the qualifications for practice, including the allowance of a cosmetologist licensed before January 1, 2007, to perform all services of a licensed cosmetologist; allows a facial specialist registered or enrolled in a cosmetology school before January 1, 2007, to take the exam for an esthetician license; a manicure, pedicure, or nail extension specialist registered or enrolled in a cosmetology school before January 1, 2007, to take the exam for a nail technician license; and allows specialists registered before January 1, 2007, to continue to practice under their specialty registration without taking a licensure examination; provides for the renewal of current specialty registrations;
- revises the requirements for hair technician, esthetician, nail technician and cosmetology applicants and allows persons who were enrolled or began their education prior to January 1, 2007, to take the examination and be licensed as a cosmetologist upon completion of 1,200 educational hours; adds additional procedures for out-of-country and other state endorsement; and
- increases the required educational hours, set by the Board of Cosmetology, for cosmetologists from 1,200 to 1,800, estheticians from 260 to 600, nail specialists from 240 to 350, and hair braiders from 16 to 40.

The Department of Business and Professional Regulation indicates that the additional workload will be handled with existing staff.

The bill provides an effective date of January 1, 2007.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0771c.STA.doc

DATE: 4/7/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill requires more education and the development and administration of exams for a new category of licensure, hair technician, as well as more education and the development and administration of exams for an esthetician license and a nail technician license. It also increases the educational hours for a cosmetologist license.

Promote personal responsibility - The bill allows for licensees from another state or country to apply for endorsement rather than by the current requirement of licensure by examination.

The bill allows licensees to provide services at special events (i.e., weddings, proms, corporate events, etc.). Individuals performing the services must be employed by a licensed salon and the scheduling of the event must be made through a licensed salon.

The bill allows individuals who hold a valid cosmetology license in any state or who are authorized to practice in another country, to perform services in conjunction with a department store demonstration and without the requirement that services be performed in a licensed salon.

B. EFFECT OF PROPOSED CHANGES:

Present situation

The Board of Cosmetology (board) within the Department of Business and Professional Regulation (DBPR) is the agency responsible for the regulation of cosmetology under chapter 477, F.S. No person other than a duly licensed cosmetologist can practice cosmetology or use the name or title of a cosmetologist unless exempted under law.

Section 477.013(4), F.S., defines cosmetology to mean the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.

In order to be licensed as a cosmetologist, a person must be at least 16 years of age or have received a high school diploma; must pay the required application fee; must satisfy an experience requirement by being authorized to practice cosmetology in another state or country for at least a year or an education requirement of 1,200 hours of training from a cosmetology program licensed pursuant to chapter 1005, F.S., a cosmetology program within the public school system, Cosmetology Division of the Florida School for the Deaf and the Blind, or a government-operated cosmetology program in the state. Finally, the person must pass the licensure examination.

Cosmetology salons and specialty salons are required to be licensed and cosmetology services can only be performed in a licensed salon unless specifically exempted.

Section 477.0135, F.S., exempts certain persons from the provisions of chapter 477, F.S., when practicing pursuant to their professional or occupational responsibilities and duties.

Section 477.0263(3), F.S., permits a person who holds a valid cosmetology license in any country, territory, or jurisdiction of the United States to perform cosmetology services in a location other than a licensed salon when the services are performed in connection with the motion picture, fashion photography, theatrical, or television industry; a photograph studio salon; a manufacturer trade show demonstration; or an educational seminar.

Effect of proposed changes

Section 1. Amends 477.013, F.S., to address the definition of “cosmetology” and the services allowed under the “hair technician” license, the “esthetician” license, and the “nail technician” license; clarify that an esthetician can tint eyebrows or eyelashes, clarify that a hair technician can weave or braid a person’s hair; and clarify that a nail technician can manipulate the superficial tissue of a person’s forearms, hands or legs below the knee or feet; moves the body wrapping service into the esthetician license; define “salon” and strike the definition of “specialty salon”; amend the definition of shampooing to mean “cleansing” of the hair rather than just “washing” of the hair; clarify the definition of hair braiding to mean “the weaving or interweaving of a person’s own natural hair” rather than “the weaving or interweaving of natural human hair.”

Section 2. Creates 477.0131, F.S., to specify categories of licensure to include hair technicians, estheticians, nail technicians, and cosmetologists.

Section 3. Amends 477.0132, F.S., to require hair braiding providers to take and pass a course of at least 40 hours consisting of 4 hours of instruction on HIV/AIDS, 5 hours of instruction on sanitation and sterilization, 5 hours of instruction on diseases and disorders of the scalp, 2 hours of instruction on Florida laws and rules, and 24 hours of hands-on instruction in the application and removal of hair braiding; a person may be exempt from the 24 hours of instruction in the application and removal of hair braiding if they demonstrate skill in application and removal of hair braiding through a board-approved examination; body wrappers who hold registrations issued before January 1, 2007, may continue to practice as a body wrapper; the board is required to adopt continuing education requirements for the renewal of body wrapping registrations; and eliminate the allowance for hair braiders, hair wrappers, and body wrappers to practice once their application and fee are submitted.

Section 4. Amends 477.014, F.S., to prohibit the use of “cosmetologist”, “hair technician”, “esthetician”, or “nail technician” and prohibit individuals from practicing as cosmetologists, hair technicians, estheticians or nail technicians without being properly licensed as such; allow cosmetologists licensed before January 1, 2007, to perform all services of a licensed cosmetologist; allow facial specialists and manicure/pedicure/nail extension specialists who are registered or enrolled in school before January 1, 2007, to take the exam for licensure; allow specialists registered before January 1, 2007, to continue to practice under the name of their respective specialty registration without taking the respective licensure exam; give the board rulemaking authority for renewal of registration existing before January 1, 2007.

Section 5. Amends 477.019, F.S., to expand the education requirements, set by the Board of Cosmetology, to make application for examination to include the allowance of applicants to be at least 16 years of age or has received a high school diploma or a GED, or has passed an ability-to-benefit test; require the following educational hour requirements:

- a. Hair Technician – 1,000 hours
- b. Esthetician – 600 hours (from 260 hours)
- c. Nail Technician – 350 hours (from 240 hours)
- d. Cosmetologist – 1,800 hours (from 1,200 hours)

The bill allows a student who has enrolled and begun his/her education before January 1, 2007, to take the exam to be licensed as a cosmetology upon completion of 1,200 hours; require a student who begins his/her education on or after January 1, 2007, to comply with the new educational hours before taking the exam; eliminate the ability of a student to petition the board to sit for the examination after completing 1,000 educational hours; allow a graduate of a licensed cosmetology school or a program within the public school system, after submitting a complete application for examination for licensure as a cosmetologist, hair technician, esthetician or nail technician to practice in his/her respective area for a maximum of 60 days, provided he/she practices under the supervision of a licensed professional in a licensed salon; if he/she fails the exam the first time, he/she may continue to practice under the supervision of a licensed professional in a licensed salon for an additional 60 days, provided the applicant applies for the next available exam; the applicant may not continue to practice if he/she fails

the exam twice; allows for the endorsement of current active out-of-country cosmetology licenses so long as those out-of-country qualifications are substantially similar to, equivalent to, or greater than the qualifications required of applicants from Florida; require the board and the department to adopt procedures to expedite the process by which qualified endorsement applicants may obtain information validating his/her licensure status from the applicant's original state or country; allow for work experience to be substituted for required educational hours in the amount and manner provided by board rule; and remove the current 48 hour cap on the number of hours of continuing education refresher courses.

Section 6. Amends 477.0212, F.S., to require the board to adopt rules for license renewal or continuing education; and increase statutory fee caps for the reactivation of an inactive license – from \$50 to \$100.

Section 7. Amends 477.023, F.S., to add the allowance of the certification of grooming and salon services training programs to the already existing cosmetology training programs within the public school system and does not prevent the government operation of any other cosmetology program in this state.

Section 8. Amends 477.025, F.S., to eliminate the distinction between a cosmetology salon and a specialty salon.

Section 9. Amends 477.026, F.S. to add hair technicians, estheticians, and nail technician categories to the current fee structures; and to eliminate application and endorsement registration fees for specialists.

Section 10. Amends 477.0263, F.S., to exempt individuals conducting department store demonstrations who hold a valid cosmetology license in another state or country to provide cosmetology services outside of a license salon and allow licensees or registrants to perform services outside a licensed salon for special events so long as the person is employed by a licensed salon and appointments for such services are made through a licensed salon.

Section 11. Amends 477.0265, F.S., to change references from "cosmetology" to "in the field of cosmetology."

Section 12. Amends 477.028, F.S., to add conforming language to include "hair technician, esthetician, or nail technician" and change references from "cosmetology" to "in the field of cosmetology."

Section 13. Amends 477.029, F.S., to add conforming language to include "hair technician, esthetician, or nail technician" strike reference to "cosmetology" salon.

Section 14. Repeals s. 477.0201, F.S., relating to specialty registration, qualifications, registration renewal and endorsement.

Section 15. Provides an effective date of January 1, 2007.

C. SECTION DIRECTORY:

Section 1. Amends 477.013, F.S., relating to the definition of "cosmetology" and the services allowed under the "hair technician" license, the "esthetician" license, and the "nail technician" license.

Section 2. Creates 477.0131, F.S., specifying categories of licensure to include hair technician, estheticians, nail technicians, and cosmetologists.

Section 3. Amends 477.0132, F.S., relating to hair braiding, hair wrapping, and body wrapping registration.

Section 4. Amends 477.014, F.S., relating to qualifications for the practice of cosmetology.

Section 5. Amends 477.019, F.S., expanding the education requirements.

Section 6. Amends 477.0212, F.S., requiring the board to adopt rules for license renewal or continuing education; and increase statutory fee caps for the reactivation of an inactive license – from \$50 to \$100.

Section 7. Amends 477.023, F.S., relating to schools of cosmetology licensure.

Section 8. Amends 477.025, F.S. relating to cosmetology salons; specialty salons; requisites; licensure; inspection; mobile cosmetology salons, and to eliminate the distinction between a cosmetology salon and a specialty salon.

Section 9. Amends 477.026, F.S. relating to fees, revising fee provisions.

Section 10. Amends 477.0263, F.S., relating to cosmetology services to be performed in licensed salon; exception.

Section 11. Amends 477.0265, F.S., relating to prohibited acts to change references from "cosmetology" to "in the field of cosmetology."

Section 12. Amends 477.028, F.S., relating to disciplinary proceedings to add conforming language.

Section 13. Amends 477.029, F.S., relating to penalties to add conforming language.

Section 14. Repeals s. 477.0201, F.S., relating to specialty registration, qualifications, registration renewal and endorsement.

Section 15. Provides an effective date of January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

C. FISCAL COMMENTS:

The DBPR projects:

- that the bill has a fiscal impact on the DBPR related to workload, testing services and licensure costs;
- the Division of Professions will need additional Other Personal Services (OPS) staff in the board office and expenses budget for travel as this bill will increase board meeting agendas and require additional travel days; and
- licensure costs will be associated with the creation of the new licenses (new application processing procedures, updating LicensEase to incorporate new licenses and their requirements, creation of new applications forms, renewal processing for new license types, etc.).

The DBPR estimates they will also have additional exam testing costs the first year related to the development of four new examinations for cosmetology licensure. The department indicates that the additional workload will be handled with existing staff.

Fee Caps

The DBPR notes that since first being regulated in 1978, cosmetology fee caps have been at the \$25 fee level. Fees for endorsement applications were raised to the current level of \$50 in 1982. Fees for reactivation were set at the current level of \$50 in 1983. As of December 31, 2005, the balance in the cosmetology account within the Professional Regulation Trust Fund was a negative \$1,042,545. Without raising the fee caps, the projected deficit as of June 30, 2009, is estimated to be \$5,151,823.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill gives the board authority to develop continuing education rules for the renewal of body wrapping registrations and all other registrations existing prior to January 1, 2007. The bill allows for work experience to substitute for required educational hours in the amount and manner provided by board rule. The bill provides rulemaking authority for the renewal or reactivation requirements for inactive licensees. There is rulemaking authority which currently exists to include the proposed allowance for hair technicians, estheticians, nail technicians or registered specialists to perform services in a location other than a licensed salon such as a nursing home, hospital or residence when a client, for reasons of ill health, are unable to go to a licensed salon. The bill grants rulemaking authority for the allowance of services outside a licensed salon for special events so long as the individual is employed by a licensed salon and schedules appointments through a licensed salon.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DBPR notes:

- Section 3. – It is unclear as to how the provision exempting a hair braiding applicant from the required 24 hours of instruction through demonstration of skill in application and removal of hair braiding through a board-approved examination would be implemented.
- Language should be included in the existing statute to show that the department currently issues a full specialty registration. A full specialty registration is merely a combination of the facial and manicure/pedicure/nail extension specialty registrations.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2006, the Business Regulation Committee adopted four amendments which modified the bill in the following manner and reported the bill favorably with committee substitute.

Amendment #1 and #2 by Carroll - Removes language referencing "manipulating tissue" to avoid conflict with massage therapy.

Amendment #3 by Carroll - Removes language to clarify that an applicant for licensure must provide documentation for approval by endorsement.

Amendment #4 by Carroll - Deletes a duplicate sentence inadvertently placed in the bill.

On April 4, 2006, the Community Colleges and Workforce Committee adopted two amendments which modified the bill in the following manner. This analysis reflects the bill as amended.

Amendment #1 – Removes the increase of the fee caps that the Board of Cosmetology may authorize for the licensing fees collected by DBPR.

Amendment #2 – Removes the word “epilating”.

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CHAMBER ACTION

The Community Colleges & Workforce Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to cosmetology; amending s. 477.013, F.S.; providing and amending definitions; redefining "cosmetology" to include hair technician, esthetician, and nail technician services; including body wrapping within esthetician services; removing a distinction between specialty salons and other salons; creating s. 477.0131, F.S.; authorizing licensure for hair technicians, estheticians, nail technicians, and cosmetologists; amending s. 477.0132, F.S.; requiring passage of a specified course to receive a hair braiding registration; increasing the total hours of instruction and modifying the content of instruction required to constitute a hair braiding course; providing an exemption from a portion of required hair braiding coursework; eliminating future body wrapping registrations; authorizing renewal of current body wrapping registrations; specifying that only the Board of Cosmetology may review, evaluate, and approve

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24 required text; amending s. 477.014, F.S.; revising
25 requirements for qualification to practice under ch. 477,
26 F.S.; authorizing current specialists to sit for licensure
27 examinations in certain circumstances; providing for the
28 renewal of current specialty registrations; amending s.
29 477.019, F.S.; revising qualification, education,
30 licensure and renewal, supervised practice, and
31 endorsement requirements for cosmetologist licenses to
32 include and differentiate qualification, education,
33 licensure and renewal, supervised practice, and
34 endorsement requirements for hair technician, esthetician,
35 and nail technician licenses; requiring the board to adopt
36 certain procedures relating to licensure by endorsement;
37 amending s. 477.0212, F.S.; increasing fee caps for the
38 reactivation of an inactive license; requiring the board
39 to adopt certain rules relating to license renewal or
40 continuing education; amending s. 477.023, F.S.;
41 stipulating that the Department of Education is not
42 prevented from issuing grooming and salon services
43 certification; amending s. 477.025, F.S., relating to
44 cosmetology and specialty salons, requisites, licensure,
45 inspection, and mobile cosmetology salons, to conform;
46 amending s. 477.026, F.S.; revising fee provisions to
47 conform; amending s. 477.0263, F.S., to conform;
48 specifying circumstances under which cosmetology or
49 specialty services may be practiced outside of a licensed
50 salon; amending s. 477.0265, F.S., relating to prohibited
51 acts, to conform; amending s. 477.028, F.S., relating to

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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disciplinary proceedings, to conform; amending s. 477.029, F.S., relating to penalties, to conform; repealing s. 477.0201, F.S., relating to specialty registration, qualifications, registration renewal, and endorsement; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 477.013, Florida Statutes, is amended to read:

477.013 Definitions.--As used in this chapter, the term:

(1) "Board" means the Board of Cosmetology.

(2) "Department" means the Department of Business and Professional Regulation.

(3) "Cosmetologist" means a person who is licensed to engage in the practice of all cosmetology services in this state under the authority of this chapter, including hair technician services, esthetician services, and nail technician services, or a person who is licensed prior to January 1, 2007, to engage in the practice of cosmetology in this state.

(4) "Cosmetology" means the practice of performing or offering to perform for compensation any of the following services for aesthetic rather than medical purposes:

(a) Hair technician services, which are:

1. Treating a person's hair by:

a. Providing any method of treatment as a primary service, including arranging, beautifying, lightening, cleansing,

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coloring, cutting, dressing, processing, shampooing, shaping,
singeing, straightening, styling, tinting, or waving;

b. Providing a necessary service that is preparatory or
ancillary to a service under sub-subparagraph a., including
clipping, cutting, or trimming; or

c. Cutting a person's hair as a separate and independent
service for which a charge is directly or indirectly made
separately from charges for any other service.

2. Weaving or braiding a person's hair.

3. Shampooing and conditioning a person's hair.

4. Servicing a person's wig or artificial hairpiece on a
person's head in any manner listed in subparagraph 1.

5. Treating a person's mustache or beard by coloring,
processing, styling, or trimming.

(b) Esthetician services, which are:

1. Cleansing, exfoliating, or stimulating a person's skin
by hand or by using a mechanical device, apparatus, or appliance
with the use of any cosmetic preparation, antiseptic, lotion,
powder, oil, clay, cream, or appliance.

2. Beautifying a person's skin using a cosmetic
preparation, antiseptic, lotion, powder, oil, clay, cream, or
appliance.

3. Administering facial treatments.

4. Removing superfluous hair from a person's body using
depilatories, threading, waxing, sugaring, or tweezing.

5. Tinting eyebrows or eyelashes with products
manufactured specifically for eyebrows or eyelashes.

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6. Body wrapping, which is a treatment program that uses wraps for the purposes of cleansing and beautifying a person's skin for aesthetic rather than medical or weight-loss purposes and is the application of oils, lotions, or other fluids to the body using wraps. Body wrapping does not include manipulation of the body's superficial tissue, other than that resulting from the application of the wrap materials.

7. Submersing parts of the body in a bath of clay, oils, lotions, or other fluids.

(c) Nail technician services, which are:

1. Treating a person's nails by:

a. Cutting, trimming, polishing, painting, printing, tinting, coloring, cleansing, manicuring, or pedicuring; or

b. Affixing artificial nails, extensions, or capping.

2. Cleansing, treating, or beautifying a person's forearms, hands, legs below the knee, or feet ~~mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.~~

(5) "Salon" means a place of business where the practice of one or more of the cosmetology or specialty services are offered or performed for compensation.

(6)(5) "Specialist" means any person registered pursuant to s. 477.014(6) to practice one or more of the following

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133 specialties: holding a specialty registration in one or more of
134 the specialties registered under this chapter.

135 ~~(6) "Specialty" means the practice of one or more of the~~
136 ~~following:~~

137 (a) Manicuring, or the cutting, polishing, tinting,
138 coloring, cleansing, adding, or extending of the nails, and
139 massaging of the hands. This term includes any procedure or
140 process for the affixing of artificial nails, except those nails
141 which may be applied solely by use of a simple adhesive.

142 (b) Pedicuring, or the shaping, polishing, tinting, or
143 cleansing of the nails of the feet, and massaging or beautifying
144 of the feet.

145 (c) Facials, or the massaging or treating of the face or
146 scalp with oils, creams, lotions, or other preparations, and
147 skin care services, which means the treatment of the skin of a
148 person's body, in addition to a person's head, face, and scalp,
149 by the use of a sponge, brush, cloth, or similar device to apply
150 or remove a chemical preparation or other substance without
151 involving massage, as defined in s. 480.033(3), except that
152 chemical peels may be removed by peeling an applied preparation
153 from the skin by hand.

154 (7) "Shampooing" means the cleansing ~~washing~~ of the hair
155 with soap and water or with a special preparation, ~~or applying~~
156 ~~hair tonics.~~

157 ~~(8) "Specialty salon" means any place of business wherein~~
158 ~~the practice of one or all of the specialties as defined in~~
159 ~~subsection (6) are engaged in or carried on.~~

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(8)~~(9)~~ "Hair braiding" means the weaving or interweaving of a person's own natural ~~human~~ hair for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment and does not include the use of hair extensions or wefts.

(9)~~(10)~~ "Hair wrapping" means the wrapping of manufactured materials around a strand or strands of human hair, for compensation, without cutting, coloring, permanent waving, relaxing, removing, weaving, chemically treating, braiding, using hair extensions, or performing any other service defined as cosmetology.

(10)~~(11)~~ "Photography studio salon" means an establishment where the hair-arranging services and the application of cosmetic products are performed solely for the purpose of preparing the model or client for the photographic session without shampooing, cutting, coloring, permanent waving, relaxing, or removing of hair or performing any other service defined as cosmetology.

~~(12) "Body wrapping" means a treatment program that uses herbal wraps for the purposes of cleansing and beautifying the skin of the body, but does not include:~~

~~(a) The application of oils, lotions, or other fluids to the body, except fluids contained in presoaked materials used in the wraps; or~~

~~(b) Manipulation of the body's superficial tissue, other than that arising from compression emanating from the wrap materials.~~

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~~(13) "Skin care services" means the treatment of the skin of the body, other than the head, face, and scalp, by the use of a sponge, brush, cloth, or similar device to apply or remove a chemical preparation or other substance, except that chemical peels may be removed by peeling an applied preparation from the skin by hand. Skin care services must be performed by a licensed cosmetologist or facial specialist within a licensed cosmetology or specialty salon, and such services may not involve massage, as defined in s. 480.033(3), through manipulation of the superficial tissue.~~

Section 2. Section 477.0131, Florida Statutes, is created to read:

477.0131 Hair technician, esthetician, nail technician, and cosmetology licenses.--

(1) A person who is otherwise qualified by this chapter and who is authorized to practice all of the services listed in s. 477.013(4)(a) shall be licensed as a hair technician.

(2) A person who is otherwise qualified by this chapter and who is authorized to practice all of the services listed in s. 477.013(4)(b) shall be licensed as an esthetician.

(3) A person who is otherwise qualified by this chapter and who is authorized to practice all of the services listed in s. 477.013(4)(c) shall be licensed as a nail technician.

(4) A person who is otherwise qualified by this chapter and who is authorized to practice all of the services listed in s. 477.013(4) shall be licensed as a cosmetologist.

Section 3. Section 477.0132, Florida Statutes, is amended to read:

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215 477.0132 Hair braiding, hair wrapping, and body wrapping
216 registration.--

217 (1) A person whose occupation or practice is confined
218 solely to hair braiding shall register with the department,
219 shall pay the applicable registration fees, and shall take and
220 pass a course consisting of a minimum of 40 hours, except as
221 otherwise provided in this subsection. The course shall be
222 approved by the board and shall consist of 4 hours of
223 instruction in HIV/AIDS and other communicable diseases, 5 hours
224 of instruction in sanitation and sterilization, 5 hours of
225 instruction in disorders and diseases of the scalp, 2 hours of
226 instruction regarding laws affecting hair braiding, and 24 hours
227 of instruction in the application and removal of hair braiding.
228 A person who demonstrates skill in the application and removal
229 of hair braiding through a board-approved examination may be
230 exempt from the 24 hours of instruction in the application and
231 removal of hair braiding.

232 ~~(a) Persons whose occupation or practice is confined~~
233 ~~solely to hair braiding must register with the department, pay~~
234 ~~the applicable registration fee, and take a two day 16 hour~~
235 ~~course. The course shall be board approved and consist of 5~~
236 ~~hours of HIV/AIDS and other communicable diseases, 5 hours of~~
237 ~~sanitation and sterilization, 4 hours of disorders and diseases~~
238 ~~of the scalp, and 2 hours of studies regarding laws affecting~~
239 ~~hair braiding.~~

240 (2)(b) A person ~~Persons~~ whose occupation or practice is
241 confined solely to hair wrapping shall ~~must~~ register with the
242 department, pay the applicable registration fee, and take a one-

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day 6-hour course. The course shall be board approved and consist of instruction ~~education~~ in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and instruction ~~studies~~ regarding laws affecting hair wrapping.

(3) A person holding a registration in body wrapping before January 1, 2007, may continue to practice body wrapping as described in s. 477.013(4)(b)6. The board shall adopt by rule continuing education requirements for the renewal of body wrapping registrations.

~~(c) Unless otherwise licensed or exempted from licensure under this chapter, any person whose occupation or practice is body wrapping must register with the department, pay the applicable registration fee, and take a two day 12 hour course. The course shall be board approved and consist of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the skin, and studies regarding laws affecting body wrapping.~~

(4)~~(d)~~ Only the board may review, evaluate, and approve a course and text required of an applicant for registration under this section ~~subsection~~ in the occupation or practice of hair braiding or, hair wrapping, ~~or body wrapping~~. A provider of such a course is not required to hold a license under chapter 1005.

(5)~~(2)~~ Hair braiding and, hair wrapping, ~~and body wrapping~~ are not required to be practiced in a ~~cosmetology~~ salon ~~or specialty salon~~. When hair braiding or, hair wrapping, ~~or body wrapping~~ is practiced outside a ~~cosmetology~~ salon ~~or specialty salon~~, disposable implements shall must be used or all

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implements shall ~~must~~ be sanitized in a disinfectant approved for hospital use or approved by the federal Environmental Protection Agency.

~~(3) Pending issuance of registration, a person is eligible to practice hair braiding, hair wrapping, or body wrapping upon submission of a registration application that includes proof of successful completion of the education requirements and payment of the applicable fees required by this chapter.~~

Section 4. Section 477.014, Florida Statutes, is amended to read:

477.014 Qualifications for practice.--

(1) On and after January 1, 2007, a ~~1979, no~~ person who is not other than a duly licensed or registered under this chapter may not cosmetologist shall practice in any of the cosmetology areas provided in s. 477.013(4) or use the name or title of cosmetologist, hair technician, esthetician, or nail technician.

(2) A person licensed or registered under this chapter on or after January 1, 2007, may not practice or hold himself or herself out as qualified to practice in an area in which he or she is not specifically licensed or registered under this chapter.

(3) A cosmetologist licensed before January 1, 2007, may perform all the services of a licensed cosmetologist as defined in this chapter.

(4) A facial specialist registered or enrolled in a cosmetology school before January 1, 2007, may take the examination for an esthetician license.

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(5) A manicure, pedicure, or nail extension specialist registered or enrolled in a cosmetology school before January 1, 2007, may take the examination for a nail technician license.

(6) A specialist registered under this chapter before January 1, 2007, may continue to practice under the name of his or her specialty registration without taking the respective licensure examination. Renewal of all registrations existing before January 1, 2007, shall be accomplished pursuant to rules adopted by the board.

Section 5. Section 477.019, Florida Statutes, is amended to read:

477.019 Cosmetologists; hair technicians; estheticians; nail technicians; qualifications; licensure; supervised practice; license renewal; endorsement; continuing education.--

(1) A person desiring to be licensed in the field of cosmetology ~~as a cosmetologist~~ shall apply to the department for licensure.

(2) An applicant ~~is shall be~~ eligible for licensure by examination to practice cosmetology, hair technician services, esthetician services, or nail technician services if the applicant:

(a) Is at least 16 years of age or has received a high school diploma or graduate equivalency diploma or has passed an ability-to-benefit test, which is an independently administered test approved by the United States Secretary of Education as provided in 20 U.S.C. s. 1091(d).+

(b) Pays the required application fee, which is not refundable, and the required examination fee, which is

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refundable if the applicant is determined to not be eligible for licensure for any reason other than failure to successfully complete the licensure examination. ~~and~~

(c)1. Is authorized to practice cosmetology in another state or country, has been so authorized for at least 1 year, and does not qualify for licensure by endorsement as provided for in subsection (6); or

2.a. Has received a minimum number of hours of training as follows:

(I) For a hair technician, 1,000 hours.

(II) For an esthetician, 600 hours.

(III) For a nail technician, 350 hours.

(IV) For a cosmetologist, 1,800 hours.

b. ~~The training Has received a minimum of 1,200 hours of training as established by the board, which~~ shall include, but ~~need shall~~ not be limited to, the equivalent of completion of services directly related to the practice of cosmetology at one of the following:

(I)a. A school of cosmetology licensed pursuant to chapter 1005.

(II)b. A cosmetology program within the public school system.

(III)c. The Cosmetology Division of the Florida School for the Deaf and the Blind, provided the division meets the standards of this chapter.

(IV)d. A government-operated cosmetology program in this state.

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c. A person who has enrolled and begun his or her education before January 1, 2007, may take the examination to be licensed as a cosmetologist upon completion of 1,200 hours of education.

d. A person who begins his or her education on or after January 1, 2007, shall comply with the hour requirements in subparagraph a. in order to qualify to take his or her respective examination.

~~The board shall establish by rule procedures whereby the school or program may certify that a person is qualified to take the required examination after the completion of a minimum of 1,000 actual school hours. If the person then passes the examination, he or she shall have satisfied this requirement, but if the person fails the examination, he or she shall not be qualified to take the examination again until the completion of the full requirements provided by this section.~~

(3) Upon an applicant receiving a passing grade, as established by board rule, on the examination and paying the initial licensing fee, the department shall issue a license to practice in the applicant's respective area of cosmetology provided in s. 477.013(4).

(4) After submitting a complete application to take the first available examination for licensure as a cosmetologist, hair technician, esthetician, or nail technician, a graduate of a licensed cosmetology school or a program within the public school system, which school or program is certified by the Department of Education, is eligible to practice in the

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381 graduate's respective area for a maximum period of 60 days,
 382 provided such graduate practices under the supervision of a
 383 professional licensed under this chapter in a licensed salon. A
 384 graduate who fails to pass an examination the first time may
 385 continue to practice under the supervision of a professional
 386 licensed under this chapter in a licensed salon for an
 387 additional 60-day period, provided the graduate applies for the
 388 next available examination. A graduate may not continue to
 389 practice under this subsection if the graduate fails the
 390 examination twice. Following the completion of the first
 391 ~~licensing examination and pending the results of that~~
 392 ~~examination and issuance of a license to practice cosmetology,~~
 393 ~~graduates of licensed cosmetology schools or cosmetology~~
 394 ~~programs offered in public school systems, which schools or~~
 395 ~~programs are certified by the Department of Education, are~~
 396 ~~eligible to practice cosmetology, provided such graduates~~
 397 ~~practice under the supervision of a licensed cosmetologist in a~~
 398 ~~licensed cosmetology salon. A graduate who fails the first~~
 399 ~~examination may continue to practice under the supervision of a~~
 400 ~~licensed cosmetologist in a licensed cosmetology salon if the~~
 401 ~~graduate applies for the next available examination and until~~
 402 ~~the graduate receives the results of that examination. No~~
 403 ~~graduate may continue to practice under this subsection if the~~
 404 ~~graduate fails the examination twice.~~

405 (5) Renewal of license registration shall be accomplished
 406 pursuant to rules adopted by the board.

407 (6) The board shall adopt rules specifying procedures for
 408 the licensure by endorsement of practitioners desiring to be

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licensed in this state who hold a current active license in another state or country and who have met qualifications substantially similar to, equivalent to, or greater than the qualifications required of applicants from this state. For purposes of this subsection, work experience may be substituted for required educational hours in the amount and manner provided by board rule.

(7)(a) The board shall prescribe by rule continuing education requirements for licensees and registered specialists that intended to ensure the protection of the public through updated training of licensees and registered specialists, not to exceed 16 hours biennially, as a condition for renewal of a license or registration as a specialist under this chapter. Continuing education courses shall include, but not be limited to, the following subjects as they relate to the practice of cosmetology: HIV/AIDS ~~human immunodeficiency virus and acquired immune deficiency syndrome~~; Occupational Safety and Health Administration regulations; workers' compensation issues; state and federal laws and rules as they pertain to cosmetologists, the practice of cosmetology, salons, specialists, ~~specialty salons~~, and booth renters; chemical makeup as it pertains to hair, skin, and nails; and environmental issues. Courses given at educational ~~cosmetology~~ conferences may be counted toward the number of continuing education hours required if approved by the board.

(b) Any person whose occupation or practice is confined solely to hair braiding or, hair wrapping, ~~or body wrapping~~ is

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436 exempt from the continuing education requirements of this
437 subsection.

438 (c) The board may, by rule, require any licensee in
439 violation of a continuing education requirement to take a
440 refresher course or refresher course and examination in addition
441 to any other penalty. ~~The number of hours for the refresher~~
442 ~~course may not exceed 48 hours.~~

443 Section 6. Section 477.0212, Florida Statutes, is amended
444 to read:

445 477.0212 Inactive status.--

446 (1) A ~~cosmetologist's~~ license issued under this chapter
447 that has become inactive may be reactivated under s. 477.019
448 upon application to the department.

449 (2) The board shall adopt ~~promulgate~~ rules relating to
450 licenses that ~~which~~ have become inactive and for the renewal of
451 inactive licenses. The board shall prescribe by rule a fee not
452 to exceed \$100 ~~\$50~~ for the reactivation of an inactive license
453 ~~and a fee not to exceed \$50 for the renewal of an inactive~~
454 ~~license.~~ The board shall prescribe by rule the continuing
455 education requirements to be met prior to license renewal or
456 reactivation.

457 Section 7. Section 477.023, Florida Statutes, is amended
458 to read:

459 477.023 Schools of cosmetology; licensure.--~~A~~ No private
460 school of cosmetology may not ~~shall be permitted to~~ operate
461 without a license issued by the Commission for Independent
462 Education pursuant to chapter 1005. However, this chapter does
463 not ~~nothing herein shall be construed to~~ prevent certification

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by the Department of Education of grooming and salon services
and cosmetology training programs within the public school
system or ~~to~~ prevent government operation of any other program
of cosmetology in this state.

Section 8. Section 477.025, Florida Statutes, is amended
to read:

477.025 ~~Cosmetology salons; specialty Salons; requisites;~~
~~licensure; inspection; mobile eesmetology salons.--~~

(1) No ~~eesmetology salon or specialty~~ salon shall be
permitted to operate without a license issued by the department
except as provided in subsection (11).

(2) The board shall adopt rules governing the licensure
and operation of salons ~~and specialty salons~~ and their
facilities, personnel, safety and sanitary requirements, and the
license application and granting process.

(3) Any person, firm, or corporation desiring to operate a
~~eesmetology salon or specialty~~ salon in the state shall submit
to the department a salon an application form ~~upon forms~~
provided by the department, ~~and accompanied by~~ any relevant
information requested by the department, ~~and by~~ an application
fee.

(4) Upon receiving the application, the department may
cause an investigation to be made of the proposed ~~eesmetology~~
~~salon or specialty~~ salon.

(5) When an applicant fails to meet all the requirements
provided herein, the department shall deny the application in
writing and shall list the specific requirements not met. No
applicant denied licensure because of failure to meet the

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requirements herein shall be precluded from reapplying for licensure.

(6) When the department determines that the proposed ~~cosmetology salon or specialty~~ salon may reasonably be expected to meet the requirements set forth herein, the department shall grant the license upon such conditions as it shall deem proper under the circumstances and upon payment of the original licensing fee.

(7) No license for operation of a ~~cosmetology salon or specialty~~ salon may be transferred from the name of the original licensee to another. It may be transferred from one location to another only upon approval by the department, which approval shall not be unreasonably withheld.

(8) Renewal of license registration for ~~cosmetology salons or specialty~~ salons shall be accomplished pursuant to rules adopted by the board. The board is further authorized to adopt rules governing delinquent renewal of licenses and may impose penalty fees for delinquent renewal.

(9) The board is authorized to adopt rules governing the periodic inspection of ~~cosmetology salons and specialty~~ salons licensed under this chapter.

(10) (a) The board shall adopt rules governing the licensure, operation, and inspection of mobile ~~cosmetology~~ salons, including their facilities, personnel, and safety and sanitary requirements.

(b) Each mobile salon must comply with all licensure and operating requirements specified in this chapter or chapter 455 or rules of the board or department that apply to ~~cosmetology~~

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520 | salons at fixed locations, except to the extent that such
521 | requirements conflict with this subsection or rules adopted
522 | pursuant to this subsection.

523 | (c) A mobile ~~cosmetology~~ salon must maintain a permanent
524 | business address, located in the inspection area of the local
525 | department office, at which records of appointments,
526 | itineraries, license numbers of employees, and vehicle
527 | identification numbers of the licenseholder's mobile salon shall
528 | be kept and made available for verification purposes by
529 | department personnel, and at which correspondence from the
530 | department can be received.

531 | (d) To facilitate periodic inspections of mobile
532 | ~~cosmetology~~ salons, prior to the beginning of each month each
533 | mobile salon licenseholder must file with the board a written
534 | monthly itinerary listing the locations where and the dates and
535 | hours when the mobile salon will be operating.

536 | (e) The board shall establish fees for mobile ~~cosmetology~~
537 | salons, not to exceed the fees for ~~cosmetology~~ salons at fixed
538 | locations.

539 | (f) The operation of mobile ~~cosmetology~~ salons must be in
540 | compliance with all local laws and ordinances regulating
541 | business establishments, with all applicable requirements of the
542 | Americans with Disabilities Act relating to accommodations for
543 | persons with disabilities, and with all applicable OSHA
544 | requirements.

545 | (11) Facilities licensed under part II or part III of
546 | chapter 400 shall be exempt from the provisions of this section

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and a cosmetologist licensed pursuant to s. 477.019 may provide salon services exclusively for facility residents.

Section 9. Section 477.026, Florida Statutes, is amended to read:

477.026 Fees; disposition.--

(1) The board shall set fees according to the following schedule:

(a) For hair technicians, estheticians, nail technicians, or cosmetologists, fees for original licensing, license renewal, and delinquent renewal may ~~shall~~ not exceed \$25.

(b) For hair technicians, estheticians, nail technicians, or cosmetologists, fees for endorsement application, examination, and reexamination may ~~shall~~ not exceed \$50.

(c) For ~~cosmetology and specialty~~ salons, fees for license application, original licensing, license renewal, and delinquent renewal may ~~shall~~ not exceed \$50.

~~(d) For specialists, fees for application and endorsement registration shall not exceed \$30.~~

~~(d)(e)~~ For specialists, fees for ~~initial registration,~~ registration renewal, and delinquent renewal may ~~shall~~ not exceed \$50.

~~(e)(f)~~ For hair braiders and, hair wrappers, ~~and body wrappers,~~ fees for registration may ~~shall~~ not exceed \$25.

(2) All moneys collected by the department from fees authorized by this chapter shall be paid into the Professional Regulation Trust Fund, which fund is created in the department, and shall be applied in accordance with ss. 215.37 and 455.219.

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The Legislature may appropriate any excess moneys from this fund to the General Revenue Fund.

(3) The department, with the advice of the board, shall prepare and submit a proposed budget in accordance with law.

Section 10. Section 477.0263, Florida Statutes, is amended to read:

477.0263 Cosmetology services to be performed in licensed salon; exceptions ~~exception~~.--

(1) Cosmetology or specialty services shall be performed only by licensed cosmetologists, hair technicians, estheticians, nail technicians, or registered specialists in licensed salons, except as otherwise provided in this section.

(2) Pursuant to rules established by the board, cosmetology or specialty services may be performed by a licensed cosmetologist, hair technician, esthetician, nail technician, or registered specialist in a location other than a licensed salon, including, but not limited to, a nursing home, hospital, or residence, when a client for reasons of ill health is unable to go to a licensed salon. Arrangements for the performance of such cosmetology or specialty services in a location other than a licensed salon shall be made only through a licensed salon.

(3) Any person who holds a valid cosmetology license in any state or who is authorized to practice cosmetology in any country, territory, or jurisdiction of the United States may perform cosmetology services in a location other than a licensed salon when such services are performed in connection with the motion picture, fashion photography, theatrical, or television industry; a photography studio salon; a manufacturer trade show

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demonstration; a department store demonstration; or an educational seminar.

(4) Pursuant to rules established by the board, cosmetology, hair technician, esthetician, nail technician, or specialty services may be performed in a location other than a licensed salon when such services are performed in connection with a special event and are performed by a person who is employed by a licensed salon and who holds the proper license or specialty registration. Scheduling an appointment for the performance of such services in a location other than a licensed salon shall be made through a licensed salon.

Section 11. Section 477.0265, Florida Statutes, is amended to read:

477.0265 Prohibited acts.--

(1) It is unlawful for any person to:

(a) Engage in the practice of cosmetology or a specialty without an active license in the field of cosmetology ~~as a cosmetologist~~ or registration as a specialist issued by the department pursuant to the provisions of this chapter.

(b) Own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, ~~a cosmetology salon or specialty salon:~~

1. Which is not licensed under the provisions of this chapter; or

2. In which a person not licensed in the field of cosmetology or registered as a ~~cosmetologist~~ ~~or a specialist~~ is permitted to perform cosmetology services or any specialty.

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629 (c) Engage in willful or repeated violations of this
630 chapter or of any rule adopted by the board.

631 (d) Permit an employed person to engage in the practice of
632 cosmetology or of a specialty unless such person holds a valid,
633 active license in the field of cosmetology ~~as a cosmetologist~~ or
634 a registration as a specialist.

635 (e) Obtain or attempt to obtain a license or registration
636 for money, other than the required fee, or any other thing of
637 value or by fraudulent misrepresentations.

638 (f) Use or attempt to use a license to practice in the
639 field of cosmetology or a registration to practice a specialty,
640 which license or registration is suspended or revoked.

641 (g) Advertise or imply that skin care services or body
642 wrapping, as performed under this chapter, has ~~have~~ any
643 relationship to the practice of massage therapy as defined in s.
644 480.033(3), except those practices or activities defined in s.
645 477.013.

646 (h) In the practice of cosmetology, use or possess a
647 cosmetic product containing a liquid nail monomer containing any
648 trace of methyl methacrylate (MMA).

649 (2) Any person who violates any provision of this section
650 commits a misdemeanor of the second degree, punishable as
651 provided in s. 775.082 or s. 775.083.

652 Section 12. Section 477.028, Florida Statutes, is amended
653 to read:

654 477.028 Disciplinary proceedings.--

655 (1) The board may ~~shall have the power to~~ revoke or
656 suspend the license of a cosmetologist, hair technician,

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esthetician, or nail technician licensed under this chapter, or the registration of a specialist registered under this chapter, and may ~~to~~ reprimand, censure, deny subsequent licensure or registration of, or otherwise discipline a cosmetologist, hair technician, esthetician, nail technician, or a specialist licensed or registered under this chapter in any of the following cases:

(a) Upon proof that a license or registration has been obtained by fraud or misrepresentation.

(b) Upon proof that the holder of a license or registration is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the practice or instruction of cosmetology or a specialty.

(c) Upon proof that the holder of a license or registration is guilty of aiding, assisting, procuring, or advising any unlicensed person to practice in the field of cosmetology ~~as a cosmetologist~~.

(2) The board may ~~shall have the power to~~ revoke or suspend the license of a ~~cosmetology salon or a specialty~~ salon licensed under this chapter; ~~to~~ deny subsequent licensure of such salon; ~~or to~~ reprimand, censure, or otherwise discipline the owner of such salon in either of the following cases:

(a) Upon proof that a license has been obtained by fraud or misrepresentation.

(b) Upon proof that the holder of a license is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the operation of the salon so licensed.

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(3) Disciplinary proceedings shall be conducted pursuant to the provisions of chapter 120.

(4) The department may ~~shall~~ not issue or renew a license or certificate of registration under this chapter to any person against whom or salon against which the board has assessed a fine, interest, or costs associated with investigation and prosecution until the person or salon has paid in full such fine, interest, or costs associated with investigation and prosecution or until the person or salon complies with or satisfies all terms and conditions of the final order.

Section 13. Section 477.029, Florida Statutes, is amended to read:

477.029 Penalty.--

(1) It is unlawful for any person to:

(a) Hold himself or herself out as a cosmetologist, hair technician, esthetician, nail technician, specialist, hair wrapper, hair braider, or body wrapper unless duly licensed or registered, or otherwise authorized, as provided in this chapter.

(b) Operate any ~~cosmetology~~ salon unless it has been duly licensed as provided in this chapter.

(c) Permit an employed person to practice cosmetology or a specialty unless duly licensed or registered, or otherwise authorized, as provided in this chapter.

(d) Present as his or her own the license of another.

(e) Give false or forged evidence to the department in obtaining any license provided for in this chapter.

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711 (f) Impersonate any other licenseholder of like or
712 different name.
713 (g) Use or attempt to use a license that has been revoked.
714 (h) Violate any provision of s. 455.227(1), s. 477.0265,
715 or s. 477.028.
716 (i) Violate or refuse to comply with any provision of this
717 chapter or chapter 455 or a rule or final order of the board or
718 the department.
719 (2) Any person who violates the provisions of this section
720 is ~~shall be~~ subject to one or more of the following penalties,
721 as determined by the board:
722 (a) Revocation or suspension of any license or
723 registration issued pursuant to this chapter.
724 (b) Issuance of a reprimand or censure.
725 (c) Imposition of an administrative fine not to exceed
726 \$500 for each count or separate offense.
727 (d) Placement on probation for a period of time and
728 subject to such reasonable conditions as the board may specify.
729 (e) Refusal to certify to the department an applicant for
730 licensure.
731 Section 14. Section 477.0201, Florida Statutes, is
732 repealed.
733 Section 15. This act shall take effect January 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 771 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: State Administration
Appropriations Committee
Representative(s) Carroll offered the following:

Amendment (with directory and title amendments)

On page 12, Line 304 insert after the word "examination."

Such renewal shall include a full specialty registration, which
combines facial and manicure/pedicure/nail extension.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. 771 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: State Administration
Appropriations Committee
Representative(s) Carroll offered the following:

Amendment (with directory and title amendments)

Remove line(s) 554 through 569 and insert:

(a) For hair technicians, estheticians, nail technicians, or
cosmetologists, fees for original licensing, license renewal,
and delinquent renewal may shall not exceed \$50 \$25.

(b) For hair technicians, estheticians, nail technicians, or
cosmetologists, fees for endorsement application, examination,
and reexamination may shall not exceed \$150 \$50.

(c) For ~~cosmetology and specialty~~ salons, fees for license
application original licensing, license renewal, and delinquent
renewal may shall not exceed \$100 \$50.

~~(d) For specialists, fees for application and endorsement
registration shall not exceed \$30.~~

~~(d)-(e)~~ For specialists, fees for ~~initial registration,~~
registration renewal, and delinquent renewal may shall not
exceed \$100 \$50.

~~(e)-(f)~~ For hair braiders and, hair wrappers, ~~and body~~

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

22 ~~wrappers,~~ fees for registration may ~~shall~~ not exceed \$40 ~~\$25~~.

23

24

25 ===== D I R E C T O R Y A M E N D M E N T =====

26 Remove line(s) and insert:

27

28

29 ===== T I T L E A M E N D M E N T =====

30 Remove line(s) 47 and insert:

31 conform; increasing fee caps for certain fees, amending s.

32 477.0263, F.S., to conform;

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 911 CS

Department of Management Services

SPONSOR(S): Bullard

TIED BILLS:

IDEN./SIM. BILLS: SB 678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Domestic Security Committee	6 Y, 0 N, w/CS	Wiggins	Newton
2) State Administration Appropriations Committee		Dobbs	Belcher <i>mmk</i>
3) Governmental Operations Committee			
4) State Administration Council			
5) _____			

SUMMARY ANALYSIS

The bill requires that the Department of Management Services (DMS) include in the annual state facilities inventory report a list of state owned facilities that have unoccupied space suitable for use as an emergency shelter. The list must be updated annually by May 31 and must be listed by county and municipality.

The bill defines the word "suitable" for emergency shelters if they meet the standards set by the American Red Cross. It defines "unoccupied" as meaning vacant due to suspended operation or nonuse.

This bill shall take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security-The list of unoccupied buildings that can be utilized as shelters will be updated every year by May 31st so all of the counties and municipalities will know what buildings may be used as shelters to safeguard Florida residents in an emergency.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

Pursuant to the "Capital Facilities Planning and Budgeting Act" of sections 216.015-216.016, F.S., the Department of Management Services (DMS) is required to take inventory of current facilities owned, leased, rented, or otherwise occupied by any agency of the state or judicial branch.¹ To fully comply with this requirement, DMS produces an annual report. This report is available online.² Facilities not incorporated in this report include those of the State Board of Administration, Board of Regents, the Community College System, Water Management Districts, local school districts, private correctional facilities and any facilities with less than three thousand square feet in gross area.³ There are several components to the annual inventory. One, the State Facility Inventory program, includes facility ownership, management responsibility, date assessed, assessor, location, occupancy, size, and other general data. Another component, the Lease Inventory Program, consists of a recording of *all* state leases and those facilities ownership, square footages, costs, beginning and ending dates, and other general data for these leases.

DMS, pursuant to s. 252.385(4) (b) and (c), F.S., is required to incorporate provisions into state agency lease agreements for the use of suitable leased public facilities as public hurricane evacuation shelters. The DMS is also required to consult with local and state emergency management agencies to assess DMS facilities and identify the extent to which each facility has public hurricane evacuation shelter space.⁴

The Department of Community Affairs, Division of Emergency Management ("Division"), must prepare a state comprehensive emergency management plan that can be integrated into and coordinated with the emergency management plans and programs of the Federal Government as required in the "State Emergency Management Act" of sections 252.31-252.60, F.S.⁵ The plan must include a shelter component with specific planning provisions and promote shelter activity coordination between the public, private, and nonprofit sectors. This component must include strategies to ensure adequate public shelter space is available in each region of the state; establish strategies for refuge-of-last-resort programs; include plans to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel; provide for a post disaster communications system for public shelters; establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and set forth policy guidance for sheltering people with special needs.⁶ The Division has integrated the State

¹ Section 216.015(3) (b), F.S.

² <http://fcn.state.fl.us/dms/dbc/mgt/inventory.html>

³ According to the Executive Summary of the 2005 Inventory Annual Report

⁴ Suitable leased public facilities include leased public facilities that are solely occupied by state agencies and have at least 2,000 square feet of net floor area in a single room or in a combination of rooms having a minimum of 400 square feet in each room. Section 252.385 (4) (b), F.S.

⁵ Section 252.35 (2) (a), F.S.

⁶ Section 252.35 (2) (a)2., F.S.

Comprehensive Emergency Management Plan (February 1, 2004 Edition) by citation into its rules. The plan includes, in Appendix VI, the coordination of activities involved with the emergency provision of temporary shelters.⁷

The Division currently manages a program for surveying existing public and private, with written owner agreement, buildings to identify which are appropriately designed and located to serve as shelters.⁸ Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or nursing homes, which are suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies.⁹

Proposed changes:

The bill provides that the DMS must compile a list of state-owned facilities that have unoccupied space which are available for use as emergency shelters during an emergency or other catastrophic event. The list must be organized by county and municipality and must be updated by May 31 of each year. The bill defines emergency shelters as "suitable" for use as an emergency shelter if they meet the standards set by the American Red Cross. It defines "unoccupied" as meaning "vacant due to suspended operation or nonuse."

C. SECTION DIRECTORY:

Section 1. Requires the Department of Management Services to maintain a list of state-owned facilities that have unoccupied space to be used as emergency shelters during storms or other catastrophic events.

Section 2. This act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

⁷ Rule 9G-2.002, F.A.C.

⁸ Section 252.385(2), F.S.

⁹ Section 252.385(4)(a), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006 the Domestic Security committee adopted the amendment that requires the DMS to compile a list and update it annually of state-owned facilities that have unoccupied space which are suitable for use as emergency shelters. The amendment defines emergency shelters as "suitable" for use as an emergency shelter, if they meet the standards set by the American Red Cross. It defines "unoccupied" as meaning "vacant due to suspended operation or nonuse." The bill was reported favorably with committee substitute.

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CHAMBER ACTION

The Domestic Security Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the use of state facilities as emergency shelters; amending s. 252.385, F.S.; providing for use of certain state facilities as emergency shelters; requiring the Department of Management Services to list state-owned facilities that are suitable for use as emergency shelters; providing requirements with respect to such listing; defining terms; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (4) of section 252.385, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

252.385 Public shelter space.--

(4)(a) Public facilities, including schools, postsecondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or

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

nursing homes, which are suitable for use as public hurricane evacuation shelters shall be made available at the request of the local emergency management agencies. Such agencies shall coordinate with the appropriate school board, university, community college, state agency, or local governing board when requesting the use of such facilities as public hurricane evacuation shelters.

(d) The Department of Management Services shall include in the annual state facilities inventory report required under ss. 216.015-216.016 a separate list of state-owned facilities, including, but not limited to, meeting halls, auditoriums, conference centers, and training centers that have unoccupied space suitable for use as an emergency shelter during a storm or other catastrophic event. Facilities must be listed by the county and municipality where the facility is located and must be made available in accordance with paragraph (a). As used in this paragraph, the term "suitable for use as an emergency shelter" means meeting the standards set by the American Red Cross for a hurricane evacuation shelter, and the term "unoccupied" means vacant due to suspended operation or nonuse. The list must be updated by May 31 of each year.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1009 Real Estate Profession Regulation
SPONSOR(S): Cretul; Goodlette
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1816

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>17 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Civil Justice Committee</u>	<u>6 Y, 0 N</u>	<u>Shaddock</u>	<u>Bond</u>
3) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Rayman</u> 	<u>Belcher</u> 
4) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill makes a number of changes to the statutes addressing real estate brokers, sales associates and schools. Some of the significant changes are below.

- The bill provides licensure of a real estate broker or sale associate as a professional limited liability company.
- The bill increases the time limit for certification of an applicant from one to two years.
- The bill creates grounds for broker discipline while limiting the time period for the filing of an administrative complaint against a sales associate.
- The bill requires the Department of Business and Professional Regulation to notify a licensee's broker or employer in writing when a formal complaint has been filed.
- The bill removes the "Important Notice" header and warning language about disclosure of confidential information in the required agency disclosure forms.
- The bill repeals the prohibition against charging advance fees for listing real property, except for timeshares, and removes criminal penalties for failure to follow advance fee procedures.

The bill modifies commercial real estate sales and leasing commission liens. The significant changes include: defining "Owner's Net Proceeds;" providing that generally a commission notice expires one year after recording; and providing that leases mentioned in a notice of commercial lien are not a recorded conveyance under the relevant provisions of the marketable record title act.

The Florida Department of Business and Professional Regulation states that it is not possible to estimate the increase in workload but the presumption is that any increase in workload will be minimal and can be handled within existing resources.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- The bill eliminates the restrictions on advance fees or commissions, and eliminates the corresponding misdemeanor offense.

Personal responsibility -- The bill increases the administrative fine that may be imposed on practitioners from \$1,000 to \$5,000.

Safeguard individual liberty -- This bill eliminates restrictions on advance fees.

B. EFFECT OF PROPOSED CHANGES:

Real Estate Brokers, Sales Associates, and Schools

The general regulation of real estate brokers and salespersons is established under part I of ch. 475, F.S. The Florida Real Estate Commission¹ ("commission") under the Division of Real Estate of the Florida Department of Business and Professional Regulation ("DBPR") administers this program. Regulation is designed to assure the minimal competency of real estate practitioners in order to protect the public from financial harm.

Section 1

Current Law

Several real estate terms are used in chapter 475, F.S., including the following:

- "Broker" is defined as a person who for compensation buys, sells, or leases real property or negotiates the transaction for others. The definition includes a general partner, officer, or director of a partnership or corporation which acts as a broker.
- "Broker associate" means "a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another."
- "Sales associate" means "a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person."
- A broker associate or sales associate may be organized and licensed to operate as a "professional corporation" or a "limited liability company."
- Partnerships, limited liability partnerships, limited liability companies, and corporations that act as a broker must register with the commission. Pursuant to s. 475.15, F.S., the commission requires every partnership to be registered and at least one of its partners to be licensed or registered as an active broker.

¹ "The Florida Real Estate Commission (FREC) consists of seven members and meets monthly in Orlando. The commission meeting is usually the third Wednesday of the month. The FREC administers and enforces the real estate license law, Chapter 475, Part I, Florida Statutes. The Commission is also empowered to pass rules that enable it to implement its statutorily authorized duties and responsibilities." Florida Real Estate Commission (last visited Mar. 20, 2006) <http://www.myflorida.com/dbpr/re/frec_welcome.shtml>.

Effect of Bill

The bill authorizes a professional limited liability company to be licensed as a broker or sales associate.

Section 2

Current Law

Applicants for licensure must meet character and educational requirements, submit to a background check, and pass an examination. The commission is authorized to require satisfactory completion of one or more approved educational courses before a person may become licensed.

When the commission certifies that a person qualifies to take the licensure examination, the applicant has 1 year to take the examination. If the exam is not taken within that 1 year the licensure expires and a new application process must be completed and approved by the commission.

Effect of Bill

The bill specifies that the application for licensure expires in 2 years if the applicant fails to pass the examination, and the applicant's successful course completion is rendered invalid.

Section 3

Current Law

Section 475.182, F.S., requires the DBPR to adopt rules establishing a renewal of licenses procedure at least every 4 years. The Florida Administrative Code requires that a licensee to biennially renew a license upon application and payment of the renewal fee by the practitioner.² The renewal application must include proof that the licensee has, since the issuance or renewal of the license, satisfactorily completed at least 14 classroom hours of continuing education during each license period. Failure to renew before the expiration of the term of the license causes the licensee to be in involuntary inactive status. Any license which has been involuntarily inactive for more than 2 years automatically expires.

Effect of Bill

The bill authorizes a licensee to reactivate a license that has been involuntarily inactive for 12 months or less by completing at least 14 hours of continuing education. A licensee may reactivate a license that has been involuntarily inactive for more than 12 months but fewer than 24 months by completing 28 hours of education courses.

Section 4

Current Law

Section 475.25, F.S., prescribes disciplinary guidelines for violations of the provisions of part I of ch. 475.

Effect of Bill

The bill increases the administrative fine that may be imposed on practitioners from \$1,000 to \$5,000. The bill creates additional violations if a broker fails to reasonably manage or supervise any broker or sales associate whose license is affiliated with that broker or if a broker has failed to review the

brokerage's trust accounting practices. When a formal complaint is filed against a licensee, the bill requires the DBPR or the commission to notify a licensee's broker or employer.

Section 5

Current Law

The term "agency" describes the legal relationship between two persons when one person, known as the agent, acts on behalf of, or represents, the other person. The term "real estate agency law" (or "agency law") refers to laws regulating the legal relationship between real estate licensees and buyers and sellers of real estate.

A "transaction broker" is a broker who facilitates a brokerage transaction between a buyer and a seller. The transaction broker does not affirmatively represent either the buyer or seller as an agent. A "single agent" is a broker who represents either the buyer or seller but not both in the same transaction.

A real estate licensee may enter into a brokerage relationship as either a transaction broker or as a single agent with potential buyers and sellers. Florida is a "presumption of transaction brokerage" state; s. 475.278(1)(b), F.S., specifies "[i]t shall be presumed that all licensees are operating as transaction brokers unless a single agent or no brokerage relationship is established, in writing, with a customer."

Effect of Bill

The bill deletes language in the disclosure requirements for a transaction broker, single agent, and where there is no brokerage relationship. Also removed is the disclosure that the buyer or seller should not assume that a licensee represents them.

Section 6

Amends s. 475.42, F.S., to correct a cross-reference to conform to changes made by the bill.

Section 7

Current Law

Each person, school, or institution, except approved and accredited colleges, universities, community colleges, and career centers in this state, conducting or teaching any course of study in real estate practice for licensure as a broker or sales associate, or teaches any course designed or represented to enable or assist applicants for licensure to pass examinations is required to obtain a permit from the DBPR.³ An applicant for a permit to operate a proprietary real estate school, to be a chief administrator of such a school, or to be an instructor at such a school, must meet statutory qualifications for practice set forth in s. 475.17(1), F.S.

Effect of Bill

The bill requires each person, school, or institution to keep registration records, course rosters, attendance records, a file copy of each examination and progress test, and all student answer sheets for a period of at least 3 years. A copy of the classroom course roster of courses that require satisfactory completion of an examination is required to be delivered to the DBPR within 30 days after the course was completed.

³ The exemption for colleges, universities, community colleges, and career centers is limited to transferable college credit courses offered by such institutions.

Section 8

Current Law

Each broker or sales associate who attempts to negotiate a rental, or who furnishes rental information to a prospective tenant for a fee must provide the prospective tenant with a contract or receipt. The contract or receipt must conform to guidelines so disclosure of material information is effectively disclosed to a prospective tenant.

Effect of Bill

The bill limits the disclosure documents only to brokers or sales associates who provide a rental information "list" to a prospective tenant.

Commercial Real Estate Sales Commission Lien Act

Part III of ch. 475, F.S., is the Commercial Real Estate Sales Commission Lien Act enacted in 2005. The Act addresses various aspects of a broker's lien for a sales commission and describes a closing agent's obligations. The Act provides a sales broker with the power to place a lien on an owner's proceeds from a commercial real estate transaction when there is a dispute over the broker's commission. The proceeds are placed in the registry of the court until the dispute is resolved, but the closing may proceed and the buyer may take clean title to the commercial property.

Section 9

Current Law

Section 475.701, F.S., specifies that the closing agent does not subtract the amount secured by a mortgage or lien that the buyer agrees to remain on the property. However, the buyer will receive credit against the purchase price for the amount of that lien thus reducing the amount to be paid to close. If the closing agent does not also subtract the continuing lien, then the closing agent may be reserving against net proceeds that are not a part of the transaction.

Effect of Bill

The bill provides that, when calculating the owner's net proceeds that are subject to a lien, the closing agent must subtract the amount of all prior liens, not just the ones that are paid off at closing. Also see Section 14.

Section 10

Current Law

Section 475.707, F.S., provides that when there is a dispute over the broker's commission the proceeds are placed in the registry of the court until the dispute is resolved, but the closing may proceed and the buyer may take clean title to the commercial property. A commission notice recorded under this part expires 1 year after the date of recording, unless the brokerage agreement remains effective after the expiration date of the commission notice and the broker records an extension notice.

Effect of Bill

The bill specifies that a commission notice will not expire in 1 year if the owner remains obligated to pay a commission to the broker and deletes reference to the term of the brokerage agreement.

Section 11

Current Law

Current law provides conditions that must be met by the closing agent prior to the release of reserved funds to the broker.

Effect of Bill

The bill amends s. 475.709, F.S., to provide that all of the conditions specified in each of the sections must be met by the closing agent to release the reserved funds to the broker.

Section 12

Current Law

The law provides that a closing agent may initiate legal action to determine the rights of the parties to disputed funds if the owner disputes the release of the reserved proceeds, if the owner and broker have not agreed in writing within 5 days, and if neither the owner nor the broker has initiated a civil action.

Effect of Bill

The bill amends s. 475.711, F.S., to provide that all of the conditions specified must be met before an action seeking adjudication of the rights of the parties to the disputed funds may be filed.

Section 13

Current Law

In civil actions involving commissions, the non-prevailing party is required to pay the costs and reasonable attorney's fees incurred in the action by the prevailing party.⁴ However, if a court determines that neither the owner nor the broker is the prevailing party, the costs and attorney's fees of the prevailing party and the closing agent will be divided equally between and paid by the owner and broker.⁵

Effect of Bill

The bill amends s.475.713, F.S., to revise the award of costs and attorney's fees in civil actions over a commission. Specifically, the bill provides that if a court determines that neither the owner nor the broker is the prevailing party, the costs and attorney's fees of the closing agent and the amount of any costs, recording charges, and service charges of the court of court that were deducted from the disputed reserve proceeds will be divided equally between and paid by the owner and broker.

Section 14

Effect of Bill

Amends s.475.715, F.S., to provide, when calculating the owner's net proceeds that are subject to a lien, the closing agent must subtract the amount of all prior liens, not just the ones that are paid off at closing. *Also see section 9, above.*

⁴ Section 475.713(5)(a), F.S.

⁵ Section 475.713(5)(b), F.S.

Commercial Real Estate Leasing Commission Lien Act

Part IV of ch. 475, F.S. is the "Commercial Real Estate Leasing Commission Lien Act," and provides a broker in a lease transaction with the power to place a lien on an owner's interest in commercial real estate for any commission earned by a broker under a brokerage agreement. The lien is on the commercial real estate itself. The Act provides legal procedures and requirements for filing a lawsuit to enforce a lien, resolve payment of commission owed, and release parties from liens. These provisions were enacted in 2005.

Section 15

Effect of Bill

Amends s.475.719, F.S., to delete a duplicative reference.

Section 16

Current Law

A lien notice recorded under this part expires 10 years after the date of recording, unless the brokerage agreement remains effective after the expiration date of the commission notice and the broker records an extension notice.

Effect of Bill

The bill specifies that an owner remains obligated to pay a commission to the broker and deletes reference to the term of the brokerage agreement. Moreover, the bill specifies that neither the recording of a broker's lien notice or an extension nor the recording of any lis pendens⁶ to foreclose a broker's lien constitutes notice to a creditor or subsequent purchaser of the existence of the lease.

Section 17

Effect of Bill

Amends s. 721.20, F.S., to correct a reference.

Advance Fees

Section 18

Current Law

Section 475.452, F.S., provides the procedures for advance fees collected by a broker in all situations. The commission is authorized to adopt rules to regulate the method of accounting to be used by brokers. The requirements of the section do not apply to real estate brokers who have entered into a written agreement providing how anticipated expenses are to be incurred and paid. The section also provides that anyone who violates the provisions is guilty of a misdemeanor of the first degree.

Effect of Bill

⁶ Lis pendens is defined as "[a] notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome." Black's Law Dictionary 943 (7th ed. 1999).

Repeals s. 475.452, F.S., relating to the advance fees, the deposit of those fees, and accounting procedures for the fees.

Section 19

Provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 475.161, F.S., to require a professional limited liability company to be licensed as a broker or sales associate.

Section 2. Amends s. 475.181, F.S., dealing with expired licenses.

Section 3. Amends s. 475.183, F.S., regarding reactivation of involuntary inactive licenses.

Section 4. Amends s. 475.25, F.S., by increasing an administrative fine.

Section 5. Amends s. 475.278, F.S., by deleting language in a broker disclosure agreement.

Section 6. Amends s. 475.42, F.S., to correct a cross-reference.

Section 7. Amends s. 475.451, F.S., relating to the retention of broker education records.

Section 8. Amends s. 475.453, F.S., by limiting the disclosure documents only to brokers or sales associates who provide a rental information "list" to a prospective tenant.

Section 9. Amends s. 475.701, F.S., relating to the calculation of an owner's net proceeds.

Section 10. Amends s. 475.707, F.S., relating to the expiration of a commission notice.

Section 11. Amends s. 475.709, F.S., regarding what conditions must be met before a closing agent may release reserved funds.

Section 12. Amends s. 475.711, F.S., to provide that all of the conditions specified must be met in before an action seeking adjudication of the rights of the parties to the disputed funds may be filed.

Section 13. Amends s.475.713, F.S., to correct references.

Section 14. Amends s.475.715, F.S., relating to a closing agent's calculation of an owner's net proceeds.

Section 15. Amends s.475.719, F.S., to delete a duplicative reference.

Section 16. Amends s. 475.807, F.S., regarding an owner's obligation to pay a commission.

Section 17. Amends s. 721.20, F.S., to correct a reference.

Section 18. Repeals s, 475.452, F.S., relating to advance fee accounting procedures.

Section 19. Provides an effective date of July 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the administrative responsibilities for education providers and instructors related to the retention of education documentation. There may be a minimal effect on how certain licensees structure their business entities by allowing the licensure of a limited liability company or professional limited liability company. This would enable certain licensees to take advantage of certain tax benefits available to these business entities. The bill would also enable licensee to take advantage of certain professional protections against liability.

D. FISCAL COMMENTS:

The Florida Department of Business and Professional Regulation projects, "[i]t is not possible to estimate the increase in workload but the presumption is that any increase in workload will be minimal and can be handled within existing resources." The bill would increase the amount of work for the FREC and department operations to perform to relative to continuing education and make it more likely that license holders request formal hearings before an administrative law judge rather than submitting to the enforcement of discipline at informal hearings before the FREC. The broadening of the scope of persons notified of the filing of administrative complaints will increase workload for staff supporting the actions of the FREC.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Business and Professional Regulation notes, the bill "may require rule making by the FREC to carry out the additional duties prescribed."

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled

2 An act relating to real estate profession regulation;

3 amending s. 475.161, F.S.; providing for broker associate

4 or sales associate licensure as a professional limited

5 liability company; amending s. 475.181, F.S.; revising and

6 adding conditions for licensure; amending s. 475.183,

7 F.S.; providing continuing education requirements for

8 certain license renewal; requiring the Florida Real Estate

9 Commission to prescribe certain continuing education

10 courses; amending s. 475.25, F.S.; increasing a maximum

11 disciplinary administrative fine; providing additional

12 grounds for discipline for brokers; providing filing

13 limitations for administrative complaints against sales

14 associates; requiring the Department of Business and

15 Professional Regulation or the commission to provide

16 notification to certain persons upon the department's or

17 commission's filing of a formal complaint against a

18 licensee; amending s. 475.278, F.S.; revising the required

19 information on a transaction broker notice, a single agent

20 notice, and a no brokerage relationship notice; amending

21 s. 475.42, F.S.; removing a cross-reference to conform to

22 changes made by the act; amending s. 475.451, F.S.;

23 requiring schools teaching real estate practice to keep

24 certain records and documents and make them available to

25 the department; requiring certain personnel of schools

26 teaching real estate practice to deliver course rosters to

27 the department by a certain date; specifying the

28 information required in a course roster; amending s.

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29 475.453, F.S.; revising a provision relating to rental
30 information given by a broker or sales associate to a
31 prospective tenant; amending s. 475.701, F.S.; revising
32 definitions; amending s. 475.707, F.S.; revising a
33 provision relating to commission notice recording;
34 amending s. 475.709, F.S.; clarifying provisions relating
35 to claim of commission; amending s. 475.711, F.S.;
36 clarifying provisions relating to actions involving
37 disputed reserved proceeds; amending s. 475.713, F.S.;
38 revising the award of costs and attorney's fees in civil
39 actions concerning commission; amending s. 475.715, F.S.;
40 revising the method by which an owner's net proceeds are
41 computed; amending s. 475.719, F.S.; removing an exception
42 from a buyer's broker provision shielding the rights and
43 remedies available to an owner, a buyer, or a buyer's
44 broker; amending s. 475.807, F.S.; revising a provision
45 relating to the recordation of lien notices; providing
46 that the recording of a broker's lien notice or any
47 extension thereof and any lis pendens shall not constitute
48 notice of the existence of any lease; amending s. 721.20,
49 F.S.; removing a cross-reference to conform to changes
50 made by the act; repealing s. 475.452, F.S., relating to
51 advance fees, deposit, accounting, penalty, and damages;
52 providing an effective date.

53
54 Be It Enacted by the Legislature of the State of Florida:
55

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Section 1. Section 475.161, Florida Statutes, is amended to read:

475.161 Licensing of broker associates and sales associates.--The commission shall license a broker associate or sales associate as an individual or, upon the licensee providing the commission with authorization from the Department of State, as a professional corporation, limited liability company, or professional limited liability company. A license shall be issued in the licensee's legal name only and, when appropriate, shall include the entity designation. This section shall not operate to permit a broker associate or sales associate to register or be licensed as a general partner, member, manager, officer, or director of a brokerage firm under s. 475.15.

Section 2. Subsection (2) of section 475.181, Florida Statutes, is amended to read:

475.181 Licensure.--

(2) The commission shall certify for licensure any applicant who satisfies the requirements of ss. 475.17, 475.175, and 475.180. The commission may refuse to certify any applicant who has violated any of the provisions of s. 475.42 or who is subject to discipline under s. 475.25. The application shall expire 2 years ~~1 year~~ after the date received if the applicant does not pass ~~fails to take~~ the appropriate examination. Additionally, if an applicant does not pass the licensing examination within 2 years after the successful course completion date, the applicant's successful course completion is invalid for licensure.

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Section 3. Subsection (2) of section 475.183, Florida Statutes, is amended to read:

475.183 Inactive status.--

(2)(a) A licensee may reactivate a license that has been involuntarily inactive for 12 months or less by satisfactorily completing at least 14 hours of a commission-prescribed continuing education course. Notwithstanding the provisions of s. 455.271, a licensee may reactivate a license that has been involuntarily inactive for more than 12 months but fewer than 24 months by satisfactorily completing 28 hours of a commission-prescribed education course.

(b) Any license that ~~which~~ has been involuntarily inactive for more than 2 years shall automatically expire. Once a license expires, it becomes null and void without any further action by the commission or department. Ninety days prior to expiration of the license, the department shall give notice to the licensee. The commission shall prescribe by rule a fee not to exceed \$100 for the late renewal of an involuntarily inactive license. The department shall collect the current renewal fee for each renewal period in which the license was involuntarily inactive in addition to any applicable late renewal fee.

Section 4. Subsections (1) and (5) of section 475.25, Florida Statutes, are amended, subsection (6) is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

475.25 Discipline.--

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a

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licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed \$5,000 ~~\$1,000~~ for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

(a) Has violated any provision of s. 455.227(1) or s. 475.42. However, licensees under this part are exempt from the provisions of s. 455.227(1)(i).

(b) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme, or device, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a listing contract, written, oral, express, or implied, in a real estate transaction; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in any such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the licensee that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the licensee or was an identified member of the general public.

139 (c) Has advertised property or services in a manner which
140 is fraudulent, false, deceptive, or misleading in form or
141 content. The commission may adopt rules defining methods of
142 advertising that violate this paragraph.

143 (d)1. Has failed to account or deliver to any person,
144 including a licensee under this chapter, at the time which has
145 been agreed upon or is required by law or, in the absence of a
146 fixed time, upon demand of the person entitled to such
147 accounting and delivery, any personal property such as money,
148 fund, deposit, check, draft, abstract of title, mortgage,
149 conveyance, lease, or other document or thing of value,
150 including a share of a real estate commission if a civil
151 judgment relating to the practice of the licensee's profession
152 has been obtained against the licensee and said judgment has not
153 been satisfied in accordance with the terms of the judgment
154 within a reasonable time, or any secret or illegal profit, or
155 any divisible share or portion thereof, which has come into the
156 licensee's hands and which is not the licensee's property or
157 which the licensee is not in law or equity entitled to retain
158 under the circumstances. However, if the licensee, in good
159 faith, entertains doubt as to what person is entitled to the
160 accounting and delivery of the escrowed property, or if
161 conflicting demands have been made upon the licensee for the
162 escrowed property, which property she or he still maintains in
163 her or his escrow or trust account, the licensee shall promptly
164 notify the commission of such doubts or conflicting demands and
165 shall promptly:

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a. Request that the commission issue an escrow disbursement order determining who is entitled to the escrowed property;

b. With the consent of all parties, submit the matter to arbitration;

c. By interpleader or otherwise, seek adjudication of the matter by a court; or

d. With the written consent of all parties, submit the matter to mediation. The department may conduct mediation or may contract with public or private entities for mediation services. However, the mediation process must be successfully completed within 90 days following the last demand or the licensee shall promptly employ one of the other escape procedures contained in this section. Payment for mediation will be as agreed to in writing by the parties. The department may adopt rules to implement this section.

If the licensee promptly employs one of the escape procedures contained herein and abides by the order or judgment resulting therefrom, no administrative complaint may be filed against the licensee for failure to account for, deliver, or maintain the escrowed property. Under certain circumstances, which the commission shall set forth by rule, a licensee may disburse property from the licensee's escrow account without notifying the commission or employing one of the procedures listed in sub-subparagraphs a.-d. If the buyer of a residential condominium unit delivers to a licensee written notice of the buyer's intent to cancel the contract for sale and purchase, as authorized by

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s. 718.503, or if the buyer of real property in good faith fails to satisfy the terms in the financing clause of a contract for sale and purchase, the licensee may return the escrowed property to the purchaser without notifying the commission or initiating any of the procedures listed in sub-subparagraphs a.-d.

2. Has failed to deposit money in an escrow account when the licensee is the purchaser of real estate under a contract where the contract requires the purchaser to place deposit money in an escrow account to be applied to the purchase price if the sale is consummated.

(e) Has violated any of the provisions of this chapter or any lawful order or rule made or issued under the provisions of this chapter or chapter 455.

(f) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the activities of a licensed broker or sales associate, or involves moral turpitude or fraudulent or dishonest dealing. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

(g) Has had a broker's or sales associate's license revoked, suspended, or otherwise acted against, or has had an application for such licensure denied, by the real estate licensing agency of another state, territory, or country.

(h) Has shared a commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker associate, or sales associate under the laws of this

222 state, for the referral of real estate business, clients,
223 prospects, or customers, or for any one or more of the services
224 set forth in s. 475.01(1)(a). For the purposes of this section,
225 it is immaterial that the person to whom such payment or
226 compensation is given made the referral or performed the service
227 from within this state or elsewhere; however, a licensed broker
228 of this state may pay a referral fee or share a real estate
229 brokerage commission with a broker licensed or registered under
230 the laws of a foreign state so long as the foreign broker does
231 not violate any law of this state.

232 (i) Has become temporarily incapacitated from acting as a
233 broker or sales associate with safety to investors or those in a
234 fiduciary relation with her or him because of drunkenness, use
235 of drugs, or temporary mental derangement; but suspension of a
236 license in such a case shall be only for the period of such
237 incapacity.

238 (j) Has rendered an opinion that the title to any property
239 sold is good or merchantable, except when correctly based upon a
240 current opinion of a licensed attorney at law, or has failed to
241 advise a prospective purchaser to consult her or his attorney on
242 the merchantability of the title or to obtain title insurance.

243 (k) Has failed, if a broker, to immediately place, upon
244 receipt, any money, fund, deposit, check, or draft entrusted to
245 her or him by any person dealing with her or him as a broker in
246 escrow with a title company, banking institution, credit union,
247 or savings and loan association located and doing business in
248 this state, or to deposit such funds in a trust or escrow
249 account maintained by her or him with some bank, credit union,

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or savings and loan association located and doing business in this state, wherein the funds shall be kept until disbursement thereof is properly authorized; or has failed, if a sales associate, to immediately place with her or his registered employer any money, fund, deposit, check, or draft entrusted to her or him by any person dealing with her or him as agent of the registered employer. The commission shall establish rules to provide for records to be maintained by the broker and the manner in which such deposits shall be made. A broker may place and maintain up to \$5,000 of personal or brokerage funds in the broker's property management escrow account and up to \$1,000 of personal or brokerage funds in the broker's sales escrow account. A broker shall be provided a reasonable amount of time to correct escrow errors if there is no shortage of funds and such errors pose no significant threat to economically harm the public. It is the intent of the Legislature that, in the event of legal proceedings concerning a broker's escrow account, the disbursement of escrowed funds not be delayed due to any dispute over the personal or brokerage funds that may be present in the escrow account.

(1) Has made or filed a report or record which the licensee knows to be false, has willfully failed to file a report or record required by state or federal law, has willfully impeded or obstructed such filing, or has induced another person to impede or obstruct such filing; but such reports or records shall include only those which are signed in the capacity of a licensed broker or sales associate.

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277 (m) Has obtained a license by means of fraud,
278 misrepresentation, or concealment.

279 (n) Is confined in any county jail, postadjudication; is
280 confined in any state or federal prison or mental institution;
281 is under home confinement ordered in lieu of institutional
282 confinement; or, through mental disease or deterioration, can no
283 longer safely be entrusted to competently deal with the public.

284 (o) Has been found guilty, for a second time, of any
285 misconduct that warrants her or his suspension or has been found
286 guilty of a course of conduct or practices which show that she
287 or he is so incompetent, negligent, dishonest, or untruthful
288 that the money, property, transactions, and rights of investors,
289 or those with whom she or he may sustain a confidential
290 relation, may not safely be entrusted to her or him.

291 (p) Has failed to inform the commission in writing within
292 30 days after pleading guilty or nolo contendere to, or being
293 convicted or found guilty of, any felony.

294 (q) Has violated any provision of s. 475.2755 or s.
295 475.278, including the duties owed under those sections.

296 (r) Has failed in any written listing agreement to include
297 a definite expiration date, description of the property, price
298 and terms, fee or commission, and a proper signature of the
299 principal(s); and has failed to give the principal(s) a legible,
300 signed, true and correct copy of the listing agreement within 24
301 hours of obtaining the written listing agreement. The written
302 listing agreement shall contain no provision requiring the
303 person signing the listing to notify the broker of the intention
304 to cancel the listing after such definite expiration date.

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(s) Has had a registration suspended, revoked, or otherwise acted against in any jurisdiction. The record of the disciplinary action certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such disciplinary action.

(t) Has violated any standard for the development or communication of a real estate appraisal or other provision of the Uniform Standards of Professional Appraisal Practice, as defined in s. 475.611, as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as defined in s. 475.611. This paragraph does not apply to a real estate broker or sales associate who, in the ordinary course of business, performs a comparative market analysis, gives a broker price opinion, or gives an opinion of value of real estate. However, in no event may this comparative market analysis, broker price opinion, or opinion of value of real estate be referred to as an appraisal, as defined in s. 475.611.

(u) Has failed, if a broker, to reasonably manage or supervise any broker associate or sales associate whose license is affiliated with such broker.

(v) Has failed, if a broker, to review the brokerage's trust accounting practices in order to ensure compliance with this chapter.

(5) An administrative complaint against a broker, ~~or~~ broker associate, or sales associate shall ~~must~~ be filed within 5 years after the time of the act giving rise to the complaint

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or within 5 years after the time the act is discovered or should have been discovered with the exercise of due diligence.

(6) The department shall promptly notify a licensee's broker or employer, as defined in this part, in writing any time the department files a formal complaint against a licensee. The notice required in this subsection shall be provided by the commission in those instances where the commission files a formal complaint against a licensee.

(7)~~(6)~~ The commission shall promptly report to the proper prosecuting authority any criminal violation of any statute relating to the practice of a real estate profession regulated by the commission.

Section 5. Paragraph (c) of subsection (2), paragraph (c) of subsection (3), and paragraph (c) of subsection (4) of section 475.278, Florida Statutes, are amended to read:

475.278 Authorized brokerage relationships; presumption of transaction brokerage; required disclosures.--

(2) TRANSACTION BROKER RELATIONSHIP.--

(c) Contents of disclosure.--The required notice given under paragraph (b) must include the following information in the following form:

~~IMPORTANT NOTICE~~

~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~

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~~You should not assume that any real estate broker or sales
associate represents you unless you agree to engage a real
estate licensee in an authorized brokerage relationship, either
as a single agent or as a transaction broker. You are advised
not to disclose any information you want to be held in
confidence until you make a decision on representation.~~

TRANSACTION BROKER NOTICE

~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE
AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.~~

As a transaction broker, (insert name of Real Estate Firm and
its Associates) , provides to you a limited form of
representation that includes the following duties:

1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the
value of residential real property and are not readily
observable to the buyer;
5. Presenting all offers and counteroffers in a timely
manner, unless a party has previously directed the licensee
otherwise in writing;
6. Limited confidentiality, unless waived in writing by a
party. This limited confidentiality will prevent disclosure that
the seller will accept a price less than the asking or listed

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price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and

7. Any additional duties that are entered into by this or by separate written agreement.

Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

Date

Signature

Signature

This paragraph expires July 1, 2008.

(3) SINGLE AGENT RELATIONSHIP.--

(c) Contents of disclosure.--

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1. Single agent duties disclosure.--The notice required under subparagraph (b)1. must include the following information in the following form:

~~IMPORTANT NOTICE~~

~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~

~~You should not assume that any real estate broker or sales associate represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you make a decision on representation.~~

SINGLE AGENT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

As a single agent, (insert name of Real Estate Entity and its Associates) owe to you the following duties:

1. Dealing honestly and fairly;
2. Loyalty;
3. Confidentiality;
4. Obedience;
5. Full disclosure;

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- 437 6. Accounting for all funds;
 438 7. Skill, care, and diligence in the transaction;
 439 8. Presenting all offers and counteroffers in a timely
 440 manner, unless a party has previously directed the licensee
 441 otherwise in writing; and
 442 9. Disclosing all known facts that materially affect the
 443 value of residential real property and are not readily
 444 observable.
 445

 Date

 Signature

- 446
 447 2. Transition disclosure.--To gain the principal's written
 448 consent to a change in relationship, a licensee must use the
 449 following disclosure:
 450

451 CONSENT TO TRANSITION TO
 452 TRANSACTION BROKER
 453

454 FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER
 455 OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT
 456 RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER
 457 FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE
 458 TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO
 459 BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP
 460 CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.
 461

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As a transaction broker, (insert name of Real Estate Firm and its Associates) , provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the value of residential real property and are not readily observable to the buyer;
5. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing;
6. Limited confidentiality, unless waived in writing by a party. This limited confidentiality will prevent disclosure that the seller will accept a price less than the asking or listed price, that the buyer will pay a price greater than the price submitted in a written offer, of the motivation of any party for selling or buying property, that a seller or buyer will agree to financing terms other than those offered, or of any other information requested by a party to remain confidential; and
7. Any additional duties that are entered into by this or by separate written agreement.

Limited representation means that a buyer or seller is not responsible for the acts of the licensee. Additionally, parties are giving up their rights to the undivided loyalty of the licensee. This aspect of limited representation allows a licensee to facilitate a real estate transaction by assisting

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both the buyer and the seller, but a licensee will not work to represent one party to the detriment of the other party when acting as a transaction broker to both parties.

_____ I agree that my agent may assume the role and duties of a transaction broker. [must be initialed or signed]

(4) NO BROKERAGE RELATIONSHIP.--

(c) Contents of disclosure.--The notice required under paragraph (b) must include the following information in the following form:

~~IMPORTANT NOTICE~~

~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~

~~You should not assume that any real estate broker or sales associate represents you unless you agree to engage a real estate licensee in an authorized brokerage relationship, either as a single agent or as a transaction broker. You are advised not to disclose any information you want to be held in confidence until you decide on representation.~~

NO BROKERAGE RELATIONSHIP NOTICE

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516 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO
517 BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE
518 THEIR DUTIES TO SELLERS AND BUYERS.

519

520 As a real estate licensee who has no brokerage relationship
521 with you, (insert name of Real Estate Entity and its
522 Associates) owe to you the following duties:

523

- 524 1. Dealing honestly and fairly;
- 525 2. Disclosing all known facts that materially affect the
526 value of residential real property which are not readily
527 observable to the buyer.
- 528 3. Accounting for all funds entrusted to the licensee.

529

530 (Date) (Signature)

531

532 Section 6. Paragraph (n) of subsection (1) of section
533 475.42, Florida Statutes, is amended to read:

534 475.42 Violations and penalties.--

535 (1) VIOLATIONS.--

536 (n) A broker or sales associate may not enter into any
537 listing or other agreement regarding her or his services in
538 connection with the resale of a timeshare period unless the
539 broker or sales associate fully and fairly discloses all
540 material aspects of the agreement to the owner of the timeshare
541 period ~~and fully complies with the provisions of s. 475.452.~~

542 Further, a broker or sales associate may not use any form of
543 contract or purchase and sale agreement in connection with the

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resale of a timeshare period unless the contract or purchase and sale agreement fully and fairly discloses all material aspects of the timeshare plan and the rights and obligations of both buyer and seller. The commission is authorized to adopt rules pursuant to chapter 120 as necessary to implement, enforce, and interpret this paragraph.

Section 7. Subsections (8) and (9) are added to section 475.451, Florida Statutes, to read:

475.451 Schools teaching real estate practice.--

(8) Beginning October 1, 2006, each person, school, or institution permitted under this section is required to keep registration records, course rosters, attendance records, a file copy of each examination and progress test, and all student answer sheets for a period of at least 3 years subsequent to the beginning of each course and make them available to the department for inspection and copying upon request.

(9)(a) Each school permitholder of a proprietary real estate school, each chief administrative person of such an institution, or each course sponsor shall deliver to the department, in a format acceptable to the department, a copy of the classroom course roster of courses that require satisfactory completion of an examination no later than 30 days beyond the end of the calendar month in which the course was completed.

(b) The course roster shall consist of the institution or school name and permit number, if applicable, the instructor's name and permit number, if applicable, course title, beginning and ending dates of the course, number of course hours, course location, if applicable, each student's full name and license

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number, if applicable, each student's mailing address, and the numerical grade each student achieved. The course roster shall also include the signature of the school permitholder, the chief administrative person, or the course sponsor.

Section 8. Subsection (1) of section 475.453, Florida Statutes, is amended to read:

475.453 Rental information; contract or receipt; refund; penalty.--

(1) Each broker or sales associate who ~~attempts to negotiate a rental, or who~~ furnishes a rental information list to a prospective tenant, for a fee paid by the prospective tenant, shall provide such prospective tenant with a contract or receipt, which contract or receipt contains a provision for the repayment of any amount over 25 percent of the fee to the prospective tenant if the prospective tenant does not obtain a rental. If the rental information list provided by the broker or sales associate to a prospective tenant is not current or accurate in any material respect, the full fee shall be repaid to the prospective tenant upon demand. A demand from the prospective tenant for the return of the fee, or any part thereof, shall be made within 30 days following the day on which the real estate broker or sales associate has contracted to perform services to the prospective tenant. The contract or receipt shall also conform to the guidelines adopted by the commission in order to effect disclosure of material information regarding the service to be provided to the prospective tenant.

Section 9. Subsections (10) and (12) of section 475.701, Florida Statutes, are amended to read:

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600 475.701 Definitions.--As used in this part:

601 (10) "Disputed reserved proceeds" means the portion of the
602 owner's net proceeds reserved by a closing agent under s.
603 475.709 that the owner disputes the broker's right to receive
604 ~~such reserved proceeds~~ under s. 475.709(5).

605 (12) "Owner's net proceeds" means the gross sales proceeds
606 that the owner is entitled to receive from the disposition of
607 any commercial real estate specified in a brokerage agreement,
608 less all of the following:

609 (a) The amount of Any money secured by ~~that is required to~~
610 ~~pay~~ any encumbrance, claim, or lien that has priority over the
611 recorded commission notice as provided in s. 475.715 ~~other than~~
612 ~~an encumbrance, claim, or lien that the buyer of the commercial~~
613 ~~real estate authorizes to remain after the disposition.~~

614 (b) Any costs incurred by the owner to close the
615 disposition, including, but not limited to, real estate transfer
616 tax, title insurance premiums, ad valorem taxes and assessments,
617 and escrow fees payable by the owner pursuant to an agreement
618 with the buyer.

619 Section 10. Subsection (3) of section 475.707, Florida
620 Statutes, is amended to read:

621 475.707 Recording commission notice; effectiveness.--

622 (3) A commission notice recorded under this part expires 1
623 year after the date of recording, unless the owner remains
624 obligated to pay a commission to the broker ~~brokerage agreement~~
625 ~~remains effective~~ after the expiration date of the commission
626 notice and the broker records an extension notice in the same
627 public records within the last 60 days before such expiration

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date. An extension notice shall refer to the recording information of the original commission notice, shall state that the owner remains obligated to pay a commission to the broker ~~brokerage agreement remains effective~~, and shall include the information and be executed in the manner as required by s. 475.705(1) for the original commission notice. A timely recorded extension notice shall extend the expiration date of the original recorded commission notice by 1 additional year. Successive extension notices may be recorded for so long as the owner remains obligated to pay a commission to the broker ~~brokerage agreement remains effective between the broker and the owner~~. Within 10 days after recording an extension notice, the broker shall deliver a copy thereof to the owner.

Section 11. Subsection (6) of section 475.709, Florida Statutes, is amended to read:

475.709 Duties of closing agent; reservation of owner's net proceeds.--

(6) The commission claimed in the commission notice shall be deemed confirmed by the owner, and the closing agent shall release the reserved proceeds to the broker, if the closing agent is required pursuant to subsection (1) to reserve any or all of the owner's net proceeds, and if all of the following conditions have been met:

- (a) Five days have passed after the closing.
- (b) The owner has neither confirmed nor disputed the claimed commission to the closing agent.

(c) The closing agent receives reasonably satisfactory evidence that the broker delivered a copy of the commission notice to the owner in accordance with s. 475.705.

Section 12. Subsection (1) of section 475.711, Florida Statutes, is amended to read:

475.711 Interpleader or other proceedings; deposit of reserved proceeds in court registry; discharge of closing agent from further liability.--

(1) The closing agent shall, by interpleader action or other legal proceeding, seek adjudication of the rights of the parties with respect to disputed reserved proceeds by the county court or circuit court, whichever may have jurisdiction of controversies in the amount of the disputed reserved proceeds, in a county where all or a portion of the commercial real estate is located if, after the closing of a transaction for the disposition of the commercial real estate, all of the following conditions are met:

(a) The closing agent has reserved all or a portion of the owner's net proceeds pursuant to s. 475.709 and the owner disputes the release to the broker of all or any portion of the reserved proceeds.

(b) The owner and the broker have not agreed in writing, within 5 days after the closing, regarding the closing agent's release of the disputed reserved proceeds.

(c) Neither the owner nor the broker have commenced a civil action to determine the rights of the parties with respect to the disputed reserved proceeds.

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Section 13. Subsection (5) of section 475.713, Florida Statutes, is amended to read:

475.713 Civil action concerning commission; order to show cause; hearing; release of proceeds; award of costs and attorney's fees.--

(5)(a) In a civil action commenced by the owner or the broker under this section or in an interpleader action or other proceeding commenced by the closing agent under s. 475.711, the owner or the broker that is not the prevailing party shall be required to pay:

1. The costs and reasonable attorney's fees incurred in the action by the prevailing party.

2. The costs and reasonable attorney's fees incurred in the action by the closing agent.

3. The amount of any costs, recording charges, and service charges of the clerk of court that were deducted from the disputed reserved proceeds under s. 475.711(2) in determining the net amount thereof deposited into the registry of the court.

(b) If the court determines that neither the owner nor the broker is the prevailing party, the amounts set forth in subparagraphs (a)~~2.1~~ and ~~3.2~~ shall be divided equally between and paid by the owner and the broker.

Section 14. Section 475.715, Florida Statutes, is amended to read:

475.715 Priority of recorded commission notice.--All statutory liens, consensual liens, mortgages, deeds of trust, assignments of rents, and other encumbrances, including all advances or charges made or accruing thereunder, whether

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voluntary or obligatory, and all modifications, extensions,
renewals, and replacements thereof, recorded prior to the
recording of a commission notice pursuant to the provisions of
s. 475.707, have priority over the commission notice. The
closing agent shall compute the owner's net proceeds by
subtracting from the gross sales proceeds, ~~and~~ the amount
required to discharge any such prior recorded lien and the
amount of money secured by any such prior recorded lien that
~~liens shall be subtracted from gross sales proceeds in computing~~
~~the owner's net proceeds unless~~ the buyer permits the same to
remain a lien against the title to the commercial real estate. A
prior recorded lien includes, without limitation, a valid
construction lien claim that is recorded after the recording of
the broker's commission notice but which relates back to a
notice of commencement recorded under s. 713.13 prior to the
recording date of the broker's commission notice.

Section 15. Subsection (3) of section 475.719, Florida
Statutes, is amended to read:

475.719 Buyer's broker.--As used in this section, the term
"buyer's broker" means a broker that is entitled to receive
payment from the buyer of commercial real estate of any fee or
other compensation for licensed services, as specified in a
written contract made between the buyer and the broker on or
after the effective date of this act relating to the buyer's
purchase of the commercial real estate.

(3) No such notice given by the buyer's broker pursuant to
subsection (2) shall constitute a tortious interference with the
sale or disposition or financing of the commercial real estate,

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~~except this section shall not affect the rights and remedies
otherwise available to the owner, the buyer, or the buyer's
broker under other applicable law.~~

Section 16. Paragraph (b) of subsection (8) of section
475.807, Florida Statutes, is amended, and subsection (9) is
added to that section, to read:

475.807 Recording lien notice; effectiveness.--

(8)

(b) To the extent that a lien notice recorded by a broker
under this part claims an automatic renewal commission that is
earned but not then payable, the lien notice expires 10 years
after the date of recording, unless within that time the broker
commences an action to foreclose the lien under s. 475.809 and
records a notice of lis pendens in the public records of the
county where the lien notice was recorded. If the owner remains
obligated to pay a commission to the broker ~~brokerage agreement~~
~~remains effective~~, the broker may extend the expiration date of
a lien notice for an automatic renewal commission by recording
an extension notice in the same public records within the last 6
months before such expiration date. An extension notice shall
refer to the recording information of the original lien notice,
shall state that the owner remains obligated to pay a commission
to the broker ~~brokerage agreement remains effective~~, and shall
include the same information and be executed in the same manner
as required by s. 475.805(1) for the original lien notice. A
timely recorded extension notice shall extend the expiration
date of the original recorded lien notice by 10 additional
years. Successive extension notices may be recorded for so long

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as the owner remains obligated to pay a commission to the broker ~~brokerage agreement remains effective between the broker and the owner.~~ Within 10 days after recording an extension notice, the broker shall deliver a copy thereof to the owner.

(9) Neither the recording of a broker's lien notice or any extension thereof nor the recording of any lis pendens to foreclose a broker's lien thereunder shall constitute notice to any creditor or subsequent purchaser pursuant to s. 695.01 or chapter 712 of the existence of any lease described in the lien notice, extension notice, or lis pendens.

Section 17. Subsection (6) of section 721.20, Florida Statutes, is amended to read:

721.20 Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.--

(6) ~~Notwithstanding the provisions of s. 475.452,~~ It is unlawful for any real estate broker, broker associate, or sales associate to collect any advance fee for the listing of any timeshare estate or timeshare license.

Section 18. Section 475.452, Florida Statutes, is repealed.


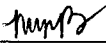
Section 19. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1091
SPONSOR(S): Ambler and others
TIED BILLS:

Insurer Insolvency

IDEN./SIM. BILLS: SB 2130

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	14 Y, 0 N	Tinney	Cooper
2) Local Government Council	6 Y, 0 N	Camechis	Hamby
3) State Administration Appropriations Committee		Rayman 	Belcher 
4) Commerce Council			
5)			

SUMMARY ANALYSIS

When an insurer faces financial difficulties or insolvency, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) intervenes to protect the affected insurer's policyholders. The bill amends the law to eliminate the need for an affected policyholder to file a "proof of claim" form before receiving a refund of unearned premium or a claim settlement from the Florida Insurance Guaranty Association (FIGA). Instead, the Department of Financial Services (DFS) is authorized to certify and remit policyholder information for refunds or claims directly to FIGA.

In addition to the consumer protections afforded by the Division of Rehabilitation and Liquidation, Florida operates several insurance guaranty funds to ensure that policyholders are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. The Florida Insurance Guaranty Association (FIGA) is responsible for many lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

Funds available to FIGA are the result of an annual assessment of up to 2 percent of each specified insurer's net direct written premiums for the previous year. In 2005, a 2 percent assessment on each insurer's 2004 net direct written premiums would have yielded approximately \$200 million had the maximum amount been assessed, however, there was no assessment to FIGA members either in 2003, 2004, or 2005.

On August 24, 1992, Hurricane Andrew devastated much of Dade County. By December 1992, six insurers were declared insolvent due to their inability to settle claims received following Hurricane Andrew. The Legislature met in special session in December 1992 to consider remedies for affected homeowners whose insurers were unable to pay valid claims.

Chapter 92-345, Laws of Florida (LOF) resulted from the December 1992 special legislative session. Under the law, the city of Homestead was authorized to issue municipal revenue bonds to fund FIGA obligations resulting from the multiple insolvencies that resulted from Hurricane Andrew claims. The revenue bonds issued by the city of Homestead did not pledge any assets or taxing authority of Homestead. Rather, the Legislature authorized FIGA to charge its members a special 2 percent assessment in addition to the regular assessment of up to 2 percent. The additional assessment served as the revenue stream pledged to retire the bonds issued by Homestead.

Under the bill, FIGA is authorized to contract with a city or county, or a combination thereof to issue tax-exempt revenue bonds for hurricane recovery. The provisions of the bill closely follow the law enacted by the 1992 Legislature to enable FIGA to pay the hurricane-related claims of insurers who became insolvent following Hurricane Andrew. As in 1993, FIGA will guarantee the tax-exempt bonds through the imposition of an emergency assessment of up to 2 percent in addition to the regular FIGA assessment. The guaranty association is authorized to charge the emergency assessment for the life of the bonds.

There does not appear to be an immediate fiscal impact to the state from the provisions in the bill.

Provides that the bill shall take effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1091d.STA.doc

DATE: 3/31/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families and Maintain Public Security—The bill ensures that FIGA will have funds sufficient to settle the claims and refund unearned premium to a policyholder whose insurer becomes insolvent following hurricane damage in the state. Following the damage caused by the hurricanes that struck Florida in 2004 and 2005, it has become clear that Florida citizens and their communities are well-served by quick and efficient claim settlement by insurers.

B. EFFECT OF PROPOSED CHANGES:

Background

In Florida, regulation of the insurance industry is shared by the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR). The state's Chief Financial Officer (CFO) heads DFS while the head of OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, OIR is responsible for granting a certificate of authority or license to an insurer. A domestic insurer, i.e., an insurer based in Florida, must possess a certificate of authority in order to conduct business in Florida. The regulation and licensure of insurance agents and agencies is the purview of DFS. Staff of DFS also provides consumer information and assistance through the Division of Consumer Services. When an insurer faces financial difficulties or insolvency, the Division of Rehabilitation and Liquidation of DFS intervenes to protect the affected insurer's policyholders.

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the Division of Rehabilitation and Liquidation (the Division) of DFS.

By law, a delinquency proceeding is initiated by the Division against any insurer believed to be insolvent or experiencing an impairment of its capital reserves or surplus. A delinquency proceeding may include liquidation, rehabilitation, reorganization, or conservancy. Staff of the Division indicates that rehabilitation and liquidation are the two most common delinquency proceedings. By law, the Division of Rehabilitation and Liquidation files all delinquency proceedings in the Circuit Court in Leon County.

Insurance Guaranty Funds: General Information

In addition to the consumer protections afforded by the Division of Rehabilitation and Liquidation, Florida operates several insurance guaranty funds to ensure that policyholders are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance carrier. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums to policyholders. The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for 6 months or 1 year, and which is still owed on the unexpired portion of the policy.

Florida's guaranty associations are comprised of insurer representatives. Insurers are required by law to participate in guaranty associations as a condition for transacting business in the state. Monies available through a guaranty association for claims settlement and premium refunds are paid by insurers as a percentage of their total collected premiums. The percentage of premiums payable to a guaranty association is determined by law, although nationally it typically ranges from 1-3 percent. In

many cases, a guaranty association also is authorized by law to assess an additional amount if an emergency arises and the association lacks sufficient funds to pay outstanding claims and to refund unearned premiums. This means, in essence, that insurers licensed to transact insurance in a state assess or tax their respective premium income streams to pay the outstanding claims and unearned premiums of an insolvent insurer.

Most states, including Florida, have more than one insurance guaranty association. Each association is assigned by law to pay outstanding claims and unearned premium, up to limits specified by law, for specific lines of insurance. In Florida, there are four guaranty associations created in chapter 631, F.S. The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent HMO and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of workers' compensation insurance. The fourth guaranty association is the Florida Insurance Guaranty Association (FIGA). It is responsible for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

The Florida Insurance Guaranty Association (FIGA)

Provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. The board of directors for FIGA is directed by law to be comprised of at least five, and no more than nine members; members serve on the FIGA board for a 4-year term. According to the FIGA website www.figafacts.com, the current FIGA board includes eight members, including one representative each of Nationwide, Allstate, State Farm, and The Hartford, among others.

The law directs FIGA to pay any eligible claim of more than \$100 and less than \$300,000, less any applicable deductible, with a few specified exceptions (s. 631.57, F.S.) Funds available to FIGA are the result of an annual assessment of up to 2 percent of each specified insurer's net direct written premiums for the previous year. In 2004, a 2 percent assessment on each insurer's 2003 net direct written premiums would have yielded approximately \$188 million had the maximum amount been assessed; however, there was no assessment to FIGA members either in 2003 or 2004. Other monies that accrue to FIGA include receivership payments from DFS and from the agencies that liquidate the estates of insolvent insurers in other states.

The law creates three accounts under FIGA:

- auto liability account;
- auto physical damage account; and
- an account for all other included insurance lines (the all-other account).

The last FIGA assessments occurred in 2002. According to documents provided by FIGA, in December 2002, member insurers writing policies covered by the auto liability account were assessed 1.125 percent of their net direct premiums collected in 2001. Similarly, FIGA made an assessment for the auto physical damage account in 2002, as well, although that assessment was for .75 percent. There was no assessment in 2002 for the all-other account. According to FIGA, it has assessed the maximum of 2 percent only once in the past 11 years. The maximum assessment was levied in 1993, only for the all-other account, after more than six insurers were declared insolvent in the first several months following Hurricane Andrew. The law, at s. 631.56(2)(d), F.S., prohibits the use of any state funds by FIGA to settle claims and return unearned premiums.

The law authorizes insurers to include the cost of their annual FIGA assessment in their rate schedule. This means an insurer may recoup its assessment through increasing its policy rates, subject to OIR approval. Generally, however, a guaranty association assessment is one of many factors an insurer considers in setting its rates.

Changes Proposed by the Bill: Guaranty Associations

Under current law in s. 631.181, F.S., a policyholder whose insurer becomes insolvent must file a “proof of claim” form with the Division of Rehabilitation and Liquidation before refund of unearned premiums may be returned to the policyholder or before an outstanding claim may be settled. According to the division, the records and files of many insolvent insurers are complete and the division is able to determine what amounts are owed to policyholders. In many cases, policyholder information may be complete in electronic format; this means the division could certify the names and amounts due to policyholders by electronic data transfer, if such certification were permissible by law.

The bill will allow the Division of Rehabilitation and Liquidation to certify to FIGA, based upon complete records of the insurer, the names of policyholders and the amount of unearned premium due to each. The division and FIGA may determine the best format for transfer of information relating to an insolvent insurer.

Background

Local Government Revenue Bonds

Article VII of the Florida Constitution governs finance and taxation by the state and its political subdivisions. In that article, the state and its political subdivisions, including municipalities and counties, are authorized to issue bonds. In most cases, bonds issued either by a city or a county are tax exempt. The tax-exempt status generally makes bonds issued by governmental entities an attractive investment instrument.

FIGA as Bond Guarantor after Hurricane Andrew

On August 24, 1992, Hurricane Andrew devastated much of Dade County. By December 1992, six insurers were declared insolvent due to their inability to settle claims received following Hurricane Andrew. The Legislature met in special session in December 1992 to consider remedies for affected homeowners whose insurers were unable to pay valid claims.

Chapter 92-345, Laws of Florida (LOF) resulted from the December 1992 special legislative session. Under the law, the city of Homestead was authorized to issue municipal revenue bonds to fund FIGA obligations resulting from the multiple insolvencies that resulted from Hurricane Andrew claims. The revenue bonds issued by the city of Homestead did not pledge any assets or taxing authority of Homestead. Rather, the Legislature authorized FIGA to charge its members a special 2 percent assessment in addition to the regular assessment of up to 2 percent. The additional assessment served as the revenue stream pledged to retire the bonds issued by Homestead. Beginning in 1993, FIGA members were assessed the full 2 percent regular assessment. That same year, and for the following 3 years—through 1996—the full 2 percent special assessment also was collected from FIGA members. Only in 1993 did FIGA impose both 2 percent assessments. By 2000, FIGA had sufficient funds to defease (i.e. “pay off”) the Homestead bonds, although those funds were reserved to make the regular annual payments until the bonds expired in 2003.

The 2004 and 2005 Florida Hurricane Seasons

The 2004 hurricane season was particularly destructive for Florida, with four hurricanes causing extensive damage throughout the state. All four hurricanes occurred within a 45-day period beginning August 13, 2004, when Hurricane Charley made landfall as a category 4 hurricane with wind speeds of 145 miles per hour; followed on September 4 by Hurricane Frances, a Category 2 hurricane with wind speeds of 105 miles per hour. Next, Hurricane Ivan struck on September 16 followed by Hurricane Jeanne on September 26, which were both Category 3 hurricanes with respective winds speeds of 130 and 120 miles per hour at landfall. The paths of the hurricanes indicated virtually no part of Florida is immune from hurricane risk. Allegedly, the 2004 hurricanes caused damage to an estimated one in

every five homes in Florida. Every county in Florida but Liberty County reported losses as a result of the 2004 hurricane season.

The four hurricanes in 2004 are responsible for 1.66 million insurance claims and \$20.9 billion dollars of insured losses in the Florida market. The primary insurers incurred \$11.3 billion in losses (of this amount, Citizens incurred \$1.8 billion), the reinsurers incurred \$5.75 billion, and the Florida Hurricane Catastrophe Fund (FHCF) incurred \$3.85 billion.

For the most part, the insurance and reinsurance industry recapitalized after the 2004 hurricane season. That is, the capital lost by primary insurers and reinsurers was replenished. Additionally, the FHCF was able to pay its share of the losses out of cash reserves and maintain a cash balance to use to pay claims to start the 2005 hurricane season.

However, as the state was still recovering, recapitalizing, and rebuilding from the 2004 hurricanes, the 2005 season began. The 2005 hurricane season was also destructive for Florida, with four hurricanes hitting Florida for the second year in a row.

Hurricane Dennis hit Florida in the early part of hurricane season, making landfall on July 10, 2005, on Santa Rosa Island with maximum sustained winds of 121 miles per hour, making it a category 3 hurricane. Its center moved across the western Florida panhandle into southwest Alabama. The estimated gross property loss in Florida caused by Hurricane Dennis is close to \$1.4 billion. Over 57,000 insurance claims resulted from this hurricane.

Hurricane Katrina hit Florida on August 25, 2005 and moved west across the southern portion of the state and into the Gulf of Mexico. At landfall, Hurricane Katrina was a category 1 storm with maximum sustained winds of 81 miles per hour. Although Florida did not sustain as severe damage as New Orleans, Louisiana, Biloxi, Mississippi and surrounding areas, Hurricane Katrina caused an estimated gross property loss in Florida of approximately \$1.8 billion due to almost 162,000 insurance claims.

The next hurricane to hit Florida in 2005 was Hurricane Rita which made landfall on September 20, 2005. Like Hurricane Katrina, Hurricane Rita moved west across the southern part of the state with maximum sustained winds of 105 miles per hour, making it a category 2 hurricane. It is estimated Hurricane Rita caused an estimated gross property loss in Florida of \$157 million due to an estimated 4,000 insurance claims.

Hurricane Wilma moved across the southern portion of Florida taking the opposite path of Hurricanes Katrina and Rita. It moved eastward across Florida from the Gulf of Mexico to the Atlantic Ocean. It made landfall on October 24, 2005, near Cape Romano, Florida with wind speeds of 121 miles per hour, a category 3 hurricane. Insured losses from Hurricane Wilma are estimated at \$10.4 billion, making it the costliest hurricane for Florida in 2005. Almost 800,000 insurance claims resulted from Hurricane Wilma.

Claim and loss statistics and the loss distribution among primary insurers, reinsurance, and the Florida Hurricane Catastrophe Fund are still in development and being reported, but the four 2005 storms are estimated to have generated a combined 1 million claims and an estimated \$14 billion in insured losses in Florida. As of February 28, 2006, insurers have already paid over \$4 billion in insurance proceeds for claims from the 2005 hurricane season.

Insurers' losses from the 2004 and 2005 hurricanes as well as meteorological expectations that the increase in hurricane activity will continue for the foreseeable future have caused both insurers and reinsurers to reevaluate their tolerance for risk as well as the related amount of additional capital they are willing to commit to Florida. Some insurers have added new underwriting restrictions to reflect changes in their exposure tolerance. Others have nonrenewed or cancelled policies. Still others have raised rates. In fact, since 2004 the top five insurers by market share have raised rates by an average of 28.6 percent with an average per year increase of 11.8 percent.

Since the 2005 hurricanes, the reinsurance market has partly recapitalized, but not yet fully replenished their investment capital. According to reports from the insurance industry, the reinsurance market is showing some signs that reinsurers are reconsidering the risk/return relationships available when compared with other investment opportunities. Reinsurance rates for wind reinsurance along the Gulf states are increasing for reinsurance purchased in 2006. In addition, reinsurers are increasing the retention levels for reinsurance.

Changes Proposed by the Bill

Under the bill, FIGA is authorized to contract with a city or county, or a combination of cities, counties, or cities and counties to issue tax-exempt revenue bonds for hurricane recovery. The provisions of the bill closely follow the law enacted by the 1992 Legislature to enable FIGA to pay the hurricane-related claims of insurers who became insolvent following Hurricane Andrew. As in 1993, FIGA will guarantee the tax-exempt bonds through the imposition of an emergency assessment of up to 2 percent in addition to the regular FIGA assessment of up to 2 percent. The guaranty association is authorized to charge the emergency assessment for the life of the bonds.

Definitions used in the laws that govern FIGA are amended at s. 631.54, F.S. The definition for the term "covered claim" is amended to specify that for an entity other than a person, i.e., a business or other legal entity, the residence of the entity is in the state where the entity's principal place of business is located. Under current law, for an entity other than a person, the state where the entity is incorporated is considered its state of residence. This means that an entity whose primary business location is in Florida, but that is incorporated in a state other than Florida, must seek reimbursement for unearned premiums or unpaid claims from the appropriate guaranty association of the state where the business entity is incorporated.

The powers and duties of FIGA are outlined in s. 631.57, F.S. The bill amends that law to authorize FIGA to enter into a contract with a municipality or a county, or a combination of the two, for the issuance of tax-exempt revenue bonds. Bond proceeds will be used by the city or county for hurricane recovery, although the proceeds are not required to be used exclusively within the boundaries of the issuing city or county. This means that the bond proceeds may be used by FIGA to settle unpaid claims or to refund unearned premiums to citizens of the state affected by the hurricane, even if the claimant's residence is not in the city or county that issues the bonds. Bonds may be issued by any local government substantially affected by a category 1 or stronger hurricane.

The bill authorizes FIGA to impose an emergency assessment of up to 2 percent for bond payments. The emergency assessment is in addition to the regular FIGA assessment of up to 2 percent. As with the FIGA regular assessment, the emergency assessment will be based upon an insurer's direct written premiums in the previous year, after the insurer makes any refunds. The bill specifically applies the emergency assessment only for bond payments and costs associated with their issuance. The FIGA board of directors may require the emergency assessment to be paid in a single payment or in 12 monthly installments.

Insurers are required by the bill to report their emergency assessments as part of the reports they file with OIR related to setting rates. This reporting is intended to ensure that each insurer charges premiums sufficient to satisfy its reserve requirements and to meet the other liquidity requirements in law.

The bill creates s. 631.695, F.S., relating to the issuance of revenue bonds through counties and municipalities. These provisions include several pages of legislative findings relating to the potential damage to the state if hurricane damage is not addressed and repaired quickly, especially if insurers become insolvent due to hurricane claims. The findings acknowledge the personal hardship to persons and families who suffer losses during a hurricane and the need for claims to be settled expeditiously. Otherwise, the findings realize that great damage can occur to the economy and the citizens of the state. The findings also recognize the success of the FIGA bonds issued in 1993 and their potential for

future use. The legislative findings likely will be used as part of the supporting documents that accompany any future bond issue for hurricane recovery.

The bill authorizes several uses for bonds issued for hurricane recovery. Among the authorized uses is the payment of covered claims of an insolvent insurer; to refinance or replace previous borrowings; to fund reserves for the bonds; to pay expenses incident to bond issuance; and other similar enumerated purposes. The state promises not to take any action that could endanger the availability of funds to repay the bonds. A severability clause is included in the bill.

The bill requires FIGA to file a report annually with the Senate President, the Speaker of the House, and the Chief Financial Officer. The report must specify the amount of bond proceeds used each year, the number of claims settled, and analyze the amount of emergency assessment needed to retire the bonds as promised. The bill specifies that the emergency assessment is not a premium and thus, is not subject to the premium tax, the payment of commissions, or other fees.

C. SECTION DIRECTORY:

Section 1. Amends s. 631.181, F.S., regarding the responsibility of a policyholder to file a "proof of claim" form.

Section 2. Amends s. 631.54, F.S., to modify the definition of a "covered claim".

Section 3. Amends s. 631.57, F.S., relating to the powers and duties of the Florida Insurance Guaranty Association.

Section 4. Creates s. 631.695, F.S., relating to a local government issuing revenue bonds.

Section 5. States that no provision in ss. 631.57 or 631.695, F.S., may be repealed until all bonds issued under the laws are paid in full.

Section 6. Provides a severability clause.

Section 7. Provides that the bill shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The authority for FIGA to serve as guarantor for local government revenue bonds following hurricane damage to the state ensures that, even if insurers become insolvent due to large numbers of claims, funds will be available to pay the valid claims of the insolvent insurer and to refund any unearned premiums to its policyholders. Under current law, FIGA deducts a fee of \$100 for each claim of an insolvent insurer that is settled by FIGA.

2. Expenditures:

The costs to FIGA for implementing the bill should be minimal. Any costs incurred for preparing and offering the revenue bonds authorized by the bill will be paid from the bond proceeds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Cities and counties are authorized by the bill to issue tax-exempt revenue bonds for hurricane recovery. The bonds will be repaid by FIGA using an emergency assessment of up to 2 percent on the total premiums of insurers who are members of FIGA.

Bond proceeds may be used by a city or county substantially affected by a category 1 or stronger hurricane for rebuilding and repair of damaged structures. The proceeds will be available to a citizen whose insurer becomes insolvent following a hurricane. Bond monies will settle the valid claims of insolvent insurers and refund unearned premiums to affected policyholders.

2. Expenditures:

A city or county that issues revenue bonds under the bill is not required to repay the bonds from its own revenues. Rather, FIGA is authorized to charge its members an emergency assessment of up to 2 percent annually, for the life of the bonds. Expenses associated with issuing the bonds will be paid from bond proceeds. This means the costs to a city or county that issues the bonds should be negligible.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurers who are members of FIGA will be required to pay an emergency assessment of up to 2 percent of their respective premiums for the previous year to repay the bonds. Based upon the outstanding insurance policies in Florida for 2004, a 2 percent assessment on FIGA members would cost insurers an estimated \$200 million.

D. FISCAL COMMENTS:

The authority for FIGA to serve as guarantor for revenue bonds issued by a local government for hurricane recovery mirrors authority granted to FIGA by the Legislature in 1992 following the destruction to south Florida caused by Hurricane Andrew. Although there is currently no need for such bonds to be issued, granting FIGA the authority to do so should expedite hurricane recovery if the state suffers damage from one or more hurricanes in the future. The need for such bonding authority is likely to be strongest if a hurricane makes landfall in a major urban area of the state. State law prohibits FIGA from using any state monies to settle claims against an insolvent insurer.

The revenue bonds issued in 1993 by the city of Homestead enabled FIGA to settle the claims of more than six insurers who became insolvent following Hurricane Andrew. It is likely that the ability to issue such bonds again also will facilitate recovery of the state's economy should insurers suffer losses large enough to become insolvent following a hurricane.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 183 and 192, the bill refers to the Department (of Financial Services) relating to the levy of an emergency assessment of 2 percent against FIGA members in order to retire outstanding revenue bonds for hurricane recovery. The law designates OIR as the administrative entity to levy assessments. A similar reference to the department on line 210 also should be changed to the Office of Insurance Regulation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled

2 An act relating to insurer insolvency; amending s.
3 631.181, F.S.; providing an exception to certain
4 requirements for a signed statement for certain claims;
5 providing requirements; amending s. 631.54, F.S.; revising
6 the definition of "covered claim"; amending s. 631.57,
7 F.S.; revising requirements and limitations for
8 obligations of the Florida Insurance Guaranty Association,
9 Inc., for covered claims; authorizing the association to
10 contract with counties and municipalities to issue revenue
11 bonds for certain purposes; authorizing the Department of
12 Financial Services to levy assessments and emergency
13 assessments on insurers under certain circumstances for
14 certain bond repayment purposes; providing requirements
15 for and limitations on such assessments; providing for
16 payment, collection, and distribution of such assessments;
17 requiring insurers to include an analysis of revenues from
18 such assessments in a required report; providing rate
19 filing requirements for insurers relating to such
20 assessments; providing for continuing annual assessments
21 under certain circumstances; specifying emergency
22 assessments as not premium and not subject to certain
23 taxes, fees, or commissions; specifying insurer liability
24 for emergency assessments; providing an exception;
25 creating s. 631.695, F.S.; providing legislative findings
26 and purposes; providing for issuance of revenue bonds
27 through counties and municipalities to fund assistance
28 programs for paying covered claims for hurricane damage;

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29 providing procedures, requirements, and limitations for
30 counties, municipalities, and the Florida Insurance
31 Guaranty Association, Inc., relating to issuance and
32 validation of such bonds; prohibiting pledging the funds,
33 credit, property, and taxing power of the state, counties,
34 and municipalities for payment of bonds; specifying
35 authorized uses of bond proceeds; limiting the term of
36 bonds; specifying a state covenant to protect bondholders
37 from adverse actions relating to such bonds; specifying
38 exemptions for bonds, notes, and other obligations of
39 counties and municipalities from certain taxes or
40 assessments on property and revenues; authorizing counties
41 and municipalities to create a legal entity to exercise
42 certain powers; requiring the association to issue an
43 annual report on the status of certain uses of bond
44 proceeds; providing report requirements; requiring the
45 association to provide a copy of the report to the
46 Legislature and Chief Financial Officer; prohibiting
47 repeal of certain provisions relating to certain bonds
48 under certain circumstances; providing severability;
49 providing an effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Paragraph (f) is added to subsection (2) of
54 section 631.181, Florida Statutes, to read:

55 631.181 Filing and proof of claim.--

56 (2)

(f) The signed statement required by this section shall not be required on claims for which adequate claims file documentation exists within the records of the insolvent insurer. Claims for payment of unearned premium shall not be required to use the signed statement required by this section if the receiver certifies to the guaranty fund that the records of the insolvent insurer are sufficient to determine the amount of unearned premium owed to each policyholder of the insurer and such information is remitted to the guaranty fund by the receiver in electronic or other mutually agreed-upon format.

Section 2. Subsection (3) of section 631.54, Florida Statutes, is amended to read:

631.54 Definitions.--As used in this part:

(3) "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy to which this part applies, issued by an insurer, if such insurer becomes an insolvent insurer and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state. For entities other than individuals, the residence of a claimant, insured, or policyholder is the state in which the entity's principal place of business is located at the time of the insured event.

"Covered claim" shall not include:

(a) Any amount due any reinsurer, insurer, insurance pool, or underwriting association, sought directly or indirectly

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through a third party, as subrogation, contribution,
indemnification, or otherwise; or

(b) Any claim that would otherwise be a covered claim
under this part that has been rejected by any other state
guaranty fund on the grounds that an insured's net worth is
greater than that allowed under that state's guaranty law.
Member insurers shall have no right of subrogation,
contribution, indemnification, or otherwise, sought directly or
indirectly through a third party, against the insured of any
insolvent member.

Section 3. Paragraph (a) of subsection (1), paragraph (d)
of subsection (2), and paragraph (a) of subsection (3) of
section 631.57, Florida Statutes, are amended, and paragraph (e)
is added to subsection (3) of that section, to read:

631.57 Powers and duties of the association.--

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims
existing:

a. Prior to adjudication of insolvency and arising within
30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days
after the determination; or

c. Before the insured replaces the policy or causes its
cancellation, if she or he does so within 30 days of the
determination.

2.a. The obligation under subparagraph 1. shall include
only that amount of each covered claim which is in excess of
\$100 and is less than \$300,000, except with respect to policies

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covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, the obligation shall include that amount of each covered property insurance claim which is less than \$100,000 multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph ~~subparagraph~~ applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

3. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(2) The association may:

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this part. Additionally, the association may enter into such contracts with a

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municipality, a county, or a legal entity created pursuant to s.
163.01(7)(g) as are necessary in order for the municipality,
county, or legal entity to issue bonds under s. 631.695. In
connection with the issuance of any such bonds and the entering
into of any such necessary contracts, the association may agree
to such terms and conditions as the association deems necessary
and proper.

(3)(a) To the extent necessary to secure the funds for the
 respective accounts for the payment of covered claims, ~~and also~~
 to pay the reasonable costs to administer the same, and to
secure the funds for the account specified in s. 631.55(2)(c),
or to retire indebtedness, including, without limitation, the
principal, redemption premium, if any, and interest on, and
related costs of issuance of, bonds issued under s. 631.695, and
the funding of any reserves and other payments required under
the bond resolution or trust indenture pursuant to which such
bonds have been issued, the office, upon certification of the
 board of directors, shall levy assessments in the proportion
 that each insurer's net direct written premiums in this state in
 the classes protected by the account bears to the total of said
 net direct written premiums received in this state by all such
 insurers for the preceding calendar year for the kinds of
 insurance included within such account. Assessments shall be
 remitted to and administered by the board of directors in the
 manner specified by the approved plan. Each insurer so assessed
 shall have at least 30 days' written notice as to the date the
 assessment is due and payable. Every assessment shall be made as
 a uniform percentage applicable to the net direct written

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premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer shall not exceed in any one year more than 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments.

(e)1.a. In addition to assessments otherwise authorized in paragraph (a) and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(c), or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the department, upon certification of the board of directors, shall levy emergency assessments as provided in this paragraph upon insurers holding a certificate of authority. The emergency assessments payable under this paragraph by any insurer shall not exceed in any single year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance within the account specified in s. 631.55(2)(c).

b. Any emergency assessments authorized under this paragraph shall be levied by the department upon insurers holding a certificate of authority, upon certification as to the need for such assessments by the board of directors, in each year that bonds issued under s. 631.695 and secured by such

196 emergency assessments are outstanding, in such amounts up to
197 such 2-percent limit as required in order to provide for the
198 full and timely payment of the principal of, redemption premium,
199 if any, and interest on, and related costs of issuance of, such
200 bonds. The emergency assessments provided for in this paragraph
201 are assigned and pledged to the municipality, county, or legal
202 entity issuing bonds under s. 631.695, for the benefit of the
203 holders of such bonds, in order to enable such municipality,
204 county, or legal entity to provide for the payment of the
205 principal of, redemption premium, if any, and interest on such
206 bonds, the cost of issuance of such bonds, and the funding of
207 any reserves and other payments required under the bond
208 resolution or trust indenture pursuant to which such bonds have
209 been issued, without the necessity of any further action by the
210 association, the department, or any other party. To the extent
211 that bonds are issued under s. 631.695 and the association
212 determines to secure such bonds by a pledge of revenues received
213 from the emergency assessments, such bonds, upon such pledge of
214 revenues, shall be secured by and payable from the proceeds of
215 such emergency assessments, and the proceeds of emergency
216 assessments levied under this paragraph shall be remitted
217 directly to and administered by the trustee or custodian
218 appointed for such bonds.

219 c. Emergency assessments under this paragraph may be
220 payable in a single payment or, at the option of the
221 association, may be payable in 12 monthly installments with the
222 first installment being due and payable at the end of the month
223 after an emergency assessment is levied and subsequent

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installments being due not later than the end of each succeeding month.

d. If emergency assessments are imposed, the report required by s. 631.695(7) shall include an analysis of the revenues generated from the emergency assessments imposed under this paragraph.

2. In order to ensure that insurers paying emergency assessments levied under this paragraph continue to charge rates that are neither inadequate nor excessive, within 90 days after being notified of such assessments, each insurer that is to be assessed pursuant to this paragraph shall submit a rate filing for coverage included within the account specified in s. 631.55(2)(c) and for which rates are required to be filed under s. 627.062. If the filing reflects a rate change that, as a percentage, is equal to the difference between the rate of such assessment and the rate of the previous year's assessment under this paragraph, the filing shall consist of a certification so stating and shall be deemed approved when made. Any rate change of a different percentage shall be subject to the standards and procedures of s. 627.062.

3. An annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

4. Emergency assessments under this paragraph are not

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premium and are not subject to the premium tax, to any fees, or
to any commissions. An insurer is liable for all emergency
assessments that the insurer collects and shall treat the
failure of an insured to pay an emergency assessment as a
failure to pay the premium. An insurer is not liable for
uncollectible emergency assessments.

Section 4. Section 631.695, Florida Statutes, is created
to read:

631.695 Revenue bond issuance through counties or
municipalities.--

(1) The Legislature finds:

(a) The potential for widespread and massive damage to
persons and property caused by hurricanes making landfall in
this state can generate insurance claims of such a number as to
render numerous insurers operating within this state insolvent
and therefore unable to satisfy covered claims.

(b) The inability of insureds within this state to receive
payment of covered claims or to timely receive such payment
creates financial and other hardships for such insureds and
places undue burdens on the state, the affected units of local
government, and the community at large.

(c) In addition, the failure of insurers to pay covered
claims or to timely pay such claims due to the insolvency of
such insurers can undermine the public's confidence in insurers
operating within this state, thereby adversely affecting the
stability of the insurance industry in this state.

(d) The state has previously taken action to address these
problems by adopting the Florida Insurance Guaranty Association

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Act, which, among other things, provides a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer.

(e) In the wake of the unprecedented destruction caused by various hurricanes that have made landfall in this state, the resultant covered claims, and the number of insurers rendered insolvent thereby, it is evident that alternative programs must be developed to allow the Florida Insurance Guaranty Association, Inc., to more expeditiously and effectively provide for the payment of covered claims.

(f) It is therefore determined to be in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of the residents of this state, and for the protection and preservation of the economic stability of insurers operating in this state, and it is declared to be an essential public purpose, to permit certain municipalities and counties to take such actions as will provide relief to claimants and policyholders having covered claims against insolvent insurers operating in this state by expediting the handling and payment of covered claims.

(g) To achieve the foregoing purposes, it is proper to authorize municipalities and counties of this state substantially affected by the landfall of a category 1 or greater hurricane to issue bonds to assist the Florida Insurance Guaranty Association, Inc., in expediting the handling and payment of covered claims of insolvent insurers.

(h) In order to avoid the needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, it is in the best interests of the residents of this state to authorize municipalities and counties severely affected by a category 1 or greater hurricane to provide for the payment of covered claims beyond their territorial limits in the implementation of such programs.

(i) It is a paramount public purpose for municipalities and counties substantially affected by the landfall of a category 1 or greater hurricane to be able to issue bonds for the purposes described in this section. Such issuance shall provide assistance to residents of those municipalities and counties as well as to other residents of this state.

(2) The governing body of any municipality or county the residents of which have been substantially affected by a category 1 or greater hurricane may issue bonds to fund an assistance program in conjunction with, and with the consent of, the Florida Insurance Guaranty Association, Inc., for the purpose of paying claimants' or policyholders' covered claims as defined in s. 631.54 arising through the insolvency of an insurer, which insolvency is determined by the Florida Insurance Guaranty Association, Inc., to have been a result of a category 1 or greater hurricane, regardless of whether such claimants or policyholders are residents of such municipality or county or the property to which such claim relates is located within or outside the territorial jurisdiction of such municipality or county. The power of a municipality or county to issue bonds as described in this section is in addition to any powers granted

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by law and may not be abrogated or restricted by any provisions in such municipality's or county's charter. A municipality or county issuing bonds for this purpose shall enter into such contracts with the Florida Insurance Guaranty Association, Inc., or any entity acting on behalf of the Florida Insurance Guaranty Association, Inc., as are necessary to implement the assistance program. Any bonds issued by a municipality or county or combination thereof under this subsection shall be payable from and secured by moneys received by or on behalf of the municipality or county from assessments levied under s. 631.57(3) (a) and assigned and pledged to or on behalf of the municipality or county for the benefit of the holders of such bonds in connection with such assistance program. The funds, credit, property, and taxing power of the state or any municipality or county shall not be pledged for the payment of such bonds.

(3) Bonds may be validated by such municipality or county pursuant to chapter 75. The proceeds of such bonds may be used to pay covered claims of insolvent insurers; to refinance or replace previously existing borrowings or financial arrangements; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of any bond issued under this section, including costs of validating, printing, and delivering the bonds, costs of printing the official statement, costs of publishing notices of sale of the bonds, costs of obtaining credit enhancement or liquidity support, and related administrative expenses; or for such other purposes related to the financial obligations of the fund as the

364 association may determine. The term of the bonds may not exceed
365 30 years.

366 (4) The state covenants with holders of bonds of the
367 assistance program that the state will not take any action that
368 will have a material adverse effect on such holders and will not
369 repeal or abrogate the power of the board of directors of the
370 association to direct the Office of Insurance Regulation to levy
371 the assessments and to collect the proceeds of the revenues
372 pledged to the payment of such bonds as long as any such bonds
373 remain outstanding unless adequate provision has been made for
374 the payment of such bonds in the documents authorizing the
375 issuance of such bonds.

376 (5) The accomplishment of the authorized purposes of such
377 municipality or county under this section is in all respects for
378 the benefit of the people of the state, for the increase of
379 their commerce and prosperity, and for the improvement of their
380 health and living conditions. Such municipality or county, in
381 performing essential governmental functions in accomplishing its
382 purposes, is not required to pay any taxes or assessments of any
383 kind whatsoever upon any property acquired or used by the county
384 or municipality for such purposes or upon any revenues at any
385 time received by the county or municipality. The bonds, notes,
386 and other obligations of such municipality or county, and the
387 transfer of and income from such bonds, notes, and other
388 obligations, including any profits made on the sale of such
389 bonds, notes, and other obligations, are exempt from taxation of
390 any kind by the state or by any political subdivision or other
391 agency or instrumentality of the state. The exemption granted in

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this subsection is not applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

(6) Two or more municipalities or counties the residents of which have been substantially affected by a category 1 or greater hurricane may create a legal entity pursuant to s. 163.01(7)(g) to exercise the powers described in this section as well as those powers granted in s. 163.01(7)(g). Reference in this section to a municipality or county includes such legal entity.

(7) The association shall issue an annual report on the status of the use of bond proceeds as related to insolvencies caused by hurricanes. The report must contain the number and amount of claims paid. The association shall also include an analysis of the revenue generated from the assessment levied under s. 631.57(3)(a) to pay such bonds. The association shall submit a copy of the report to the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer within 90 days after the end of each calendar year in which bonds were outstanding.

Section 5. No provision of s. 631.57 or s. 631.695, Florida Statutes, shall be repealed until such time as the principal, redemption premium, if any, and interest on all bonds issued under s. 631.695, Florida Statutes, payable and secured from assessments levied under s. 631.57(3)(a), Florida Statutes, have been paid in full or adequate provision for such payment has been made in accordance with the bond resolution or trust indenture pursuant to which such bonds were issued.

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420 Section 6. If any provision of this act or the application
421 thereof to any person or circumstance is held invalid, the
422 invalidity shall not affect other provisions or applications of
423 the act which can be given effect without the invalid provision
424 or application, and to this end the provisions of this act are
425 declared severable.

426 Section 7. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1113 CS Insurance Agents
SPONSOR(S): Lopez-Cantera and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2526

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	18 Y, 0 N, w/CS	Callaway	Cooper
2) State Administration Appropriations Committee		Rayman 	Belcher 
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

Under current law, applicants for licensure by the Department of Financial Services (DFS or department) as an insurance agent, customer representative, service representative, managing general agent, or reinsurance intermediary have to be fingerprinted as a condition of licensure. Fingerprinting is done by a law enforcement agency or by other department-approved entities. The fingerprinting is done so the department can obtain the applicant's state, federal, and local criminal history to use in its investigation into an applicant's qualifications for licensure. The department provides fingerprinting at 68 locations throughout the state. Sixty four locations are at county public school administrative offices and the locations in Duval, Dade, Broward, and Palm Beach counties are at county facilities (rather than school administrative offices). This is in addition to the law enforcement facilities where applicants can get fingerprinted. Applicants for licensure must pay a fee sufficient to "cover fingerprint processing" which is currently \$64 per applicant, set by department rule.

The department requires most license applicants to pass an examination in order to become licensed. The bill requires the DFS to offer fingerprinting services to licensure applicants at each of its testing centers. The department currently has 19 testing centers. Currently, fingerprinting services are not available at the testing centers.

The bill allows a license applicant to take the license examination before his or her license application is submitted or approved and requires the applicant to take a prelicensing course before taking the license examination. The bill requires the department to collect self-reported race/ethnicity and gender information from testing examinees and to use this information to prepare and publish reports on testing results, separated by race/ethnicity and gender.

Requiring fingerprinting at the testing centers may increase testing space lease or rental fees the testing vendor has to pay. Additionally, the department may not be able to find a private vendor to perform fingerprinting at each testing location due to the costs of the fingerprinting equipment (\$285,000+) in relation to the fingerprinting fee of \$64 per applicant. Accordingly, the department would have to do the fingerprinting in-house which entails the purchase the fingerprinting equipment and associated expenses. The department will need additional resources to implement the bill, if it cannot find a private vendor to contract with to provide fingerprinting services at examination locations. The bill requires the department to spend an additional \$158,995 per year for 3 new FTEs. In addition, the department estimates \$120,069 will need to be spent in fiscal year 2006-2007 for implementation of the bill. The bill does not provide an appropriation to the department for implementation.

The bill provides and effective July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill requires the DFS to provide fingerprinting services for license applicants at 19 new locations.

The bill requires the DFS to collect additional information from testing examinees and to compile and publish testing results.

Safeguard Individual Liberty: A license applicant will have 19 new locations to obtain the fingerprinting required as part of his or her license application.

The bill requires license applicants to take a prelicensing course before being able to take the licensing examination.

Promote Personal Responsibility: The bill exempts adjusters having a specified adjusting designation from having to take the adjuster licensing test.

B. EFFECT OF PROPOSED CHANGES:

Licensure of Insurance Agents in Florida

There are many different types of insurance representatives. These include agents, customer representatives, service representatives, adjusters, and others.

In general, insurance agents transact insurance on behalf of an insurer or insurers. Agents must be licensed by the Department of Financial Services (DFS or department) to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.¹ Requirements for insurance agents vary by line and based upon resident or nonresident license type.

"Managing general agents" are persons managing all or part of the insurance business of an insurer.² A managing general agent is authorized to adjust and pay claims and negotiate reinsurance on behalf of the insurer.³

"Customer representatives" are persons appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.⁴

"Adjusters" include public adjusters, independent adjusters, or company employee adjusters.⁵ Generally, a public adjuster is any person, other than a licensed attorney, who prepares, completes, or files an insurance claim for an insured or who negotiates or settles an insurance claim on behalf of an insured.⁶ An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage or to settle an insurance claim under an insurance contract.⁷ A company

¹ s. 626.112, F.S. (2005).

² s. 626.015(14), F.S. (2005).

³ Id.

⁴ s. 626.015(4), F.S. (2005).

⁵ s. 626.015(1), F.S. (2005).

⁶ s. 626.854, F.S. (2005).

⁷ s. 626.855, F.S. (2005).

adjuster is any person employed in-house by an insurer who ascertains and determines the amount of an insurance claim, loss, or damage or settles an insurance claim under an insurance contract.⁸

“Service representatives” are persons employed by an insurer or managing general agent for the purpose of assisting a general lines agent in negotiating and affecting an insurance contract.⁹

“Reinsurance intermediaries” include reinsurance intermediary brokers and reinsurance intermediary managers.¹⁰ A reinsurance intermediary broker is any person who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the power to bind reinsurance on behalf of the ceding insurer.¹¹ A reinsurance intermediary manager is any person who has authority to bind the assumed reinsurance business of a reinsurer or manages the reinsurance business of a reinsurer and acts as an agent of the reinsurer.¹²

Licensing Requirements

All of the above-defined insurance representatives require a license from the DFS. Although requirements vary by license and line of authority, general requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.

Fingerprinting Requirement

The fingerprint requirement in current law (s. 626.171(4), F.S.) requires the agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary applicant's application for licensure to be accompanied by a set of the applicant's fingerprints. If the applicant is not an individual (i.e. a sole proprietorship, partnership, or corporation), fingerprints must be provided by the sole proprietor, majority owner, partners, officers, and directors, whichever applicable. If an insurance representative entity licensed by the DFS changes ownership or if new partners, officers, or directors of the entity are employed or appointed, the new owners, partners, officers, or directors must submit fingerprints to the DFS within 30 days after the change.

The applicant's fingerprints must be taken by a law enforcement agency or other entity approved by the DFS. The DFS uses the fingerprints as part of its investigation into an applicant's qualifications under s. 626.201, F.S., Section 626.201, F.S., requires the DFS to submit an applicant's fingerprints to the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) to discern whether the applicant has a state, federal or local criminal record. Section 624.34, F.S., sets forth what procedures the FDLE uses to accept and process the applicant's fingerprints.

In addition to a law enforcement agency location, an applicant for licensure as one of the above described insurance representatives can get fingerprinted at 64 county public school administrative offices. However, in Duval, Dade, Broward, and Palm Beach counties,¹³ fingerprinting is provided by the DFS at county government locations, rather than at the school administrative offices.

The department provides fingerprinting services at the school administrative offices under a memorandum of understanding between the DFS and the Department of Education (DOE). The DOE is required to provide fingerprinting of numerous school personnel, especially after the passage of the Jessica Lunsford Act (Ch. 2005-28, L.O.F.). The DOE contracts with a private vendor to provide fingerprinting services at the county school offices and the memorandum of understanding between the DFS and the DOE allows the DFS to provide fingerprinting for its license applicants under the DOE contract with the private vendor. The school district offices offer fingerprinting during normal business hours.

⁸ s. 626.856, F.S. (2005).

⁹ s. 626.015(17), F.S. (2005).

¹⁰ s. 626.7492(2)(e), F.S. (2005).

¹¹ s. 626.7492(2)(f), F.S. (2005).

¹² s. 626.7492(2)(g), F.S. (2005).

¹³ Fingerprint locations are in Jacksonville, Miami, Ft. Lauderdale, and West Palm Beach.

According to the department, the fingerprinting fee for fingerprints done at most school district locations is \$61 and the exact fingerprinting fee at the school districts varies by district, although by administrative rule, the DFS sets the fingerprinting fee at \$64.¹⁴ The applicant typically pays the fingerprint vendor on-line by debit or credit card; however, the vendor also accepts money orders at the fingerprinting site. The vendor then pays FDLE and the FBI for processing the fingerprints and the vendor electronically sends the fingerprints to the FDLE for processing in accordance with the statute.

The department contracts with a different vendor to provide fingerprinting services at the fingerprinting locations in Duval, Dade, Broward, and Palm Beach counties. This vendor charges license applicants \$64 for fingerprinting and is paid directly by the applicant.

The department does not pay any money for fingerprinting services and processing directly to the DOE, the school boards, or to the fingerprinting vendor at the four county locations. Rather, the entire fee is borne by the applicant.

In most cases, if the applicant submits his or her fingerprints prior to the licensure examination, the DFS receives the results of the applicant's criminal background check prior to the examination date. If the applicant has a criminal history that would preclude licensure, the department notifies the applicant before he or she takes the licensure examination and incurs the examination fee of \$56.¹⁵

The department contracts with one private vendor to administer its licensure examinations in 19 cities¹⁶ in Florida. Licensure examinations are given frequently, based on the demand for testing due to the applications received. The testing vendor leases permanent space to conduct the testing and does not own any testing locations itself. The examinations are offered Monday through Friday from 8:00 am until 9:30 pm, and on Saturday from 8:00 am until 5:00 pm.¹⁷

Proposed Changes Relating to Fingerprinting Requirement

The bill requires the DFS to provide fingerprinting at all of its examination centers during the examination times. The department currently has 19 examination centers in Florida and contracts with a private vendor for the administering of its examinations. Examination times are not set by statute or administrative rule; rather they are set based on the demand. According to proponents of the bill, permitting fingerprinting at testing locations will allow license applicants to be fingerprinted at the examination centers rather than having them leave work to be fingerprinted at the current fingerprinting locations.

Section 624.501, F.S., allows the DFS to charge a fee for fingerprinting. The fee amount is not set by statute; rather the statute allows the department to charge an amount sufficient "to cover fingerprint processing." By administrative rule, the department established the fee at \$64 and the fingerprint processing fees are paid directly from the applicant to the fingerprint vendor.

Fingerprinting equipment is estimated to cost \$15,000 per machine, for a total of \$285,000 to put machines at all 19 testing locations. According to the department, maintenance contracts are needed on the machines and personnel are required to be hired to run them. Because there is no way to ascertain how many license applicants will get fingerprinted at the testing location, the fingerprinting vendor providing fingerprinting at the testing locations may not be able to recoup the \$285,000+ expense, especially at a fingerprinting fee of \$64 per applicant. Thus, the department may not be able to locate a private vendor willing to provide fingerprinting at the testing centers and thus may have to provide the fingerprinting itself.

Additionally, if an applicant gets his or her fingerprinting done at the testing location, the department will be unable to review the fingerprint results prior to the applicant taking the license examination. This

¹⁴ Rule 69B-211.005, F.A.C. Additionally, \$47 of the fingerprinting fee is paid by the vendor to the FDLE and the FBI, with the remainder kept by the vendor.

¹⁵ Rule 69B-211.005, F.A.C. sets the examination fee at \$56 per examination.

¹⁶ Examination centers are located in Boyton Beach, Coral Gables, Fort Lauderdale, Ft. Myers (2 locations), Gainesville, Hollywood, Jacksonville, Lake Mary, Lakeland, Melbourne, Miami, Orlando, Ormond Beach, Pensacola, Sarasota, St. Petersburg, Tallahassee, and Tampa.

¹⁷ Personal communication from a representative of the DFS, on file with the Insurance Committee.

could lead to applicants taking the license examination that are not qualified for a license due to a criminal background. Currently, the department receives the fingerprint results prior to the applicant taking the license examination and is able to notify the applicant he or she is not qualified for a license based on their background check. This prevents the applicant from incurring the examination fee unnecessarily.

The department believes all of its testing centers are rented or leased by the examination vendor. If the testing centers are not large enough to accommodate fingerprinting equipment and any traffic flow associated with the fingerprinting, then the examination vendor would have to find new or additional testing space, possibly increasing the rental fee to the vendor or compromising the lease the vendor is already obligated to for the space. Any increased cost in testing space rental or lease cannot be passed on to the policyholder as the testing fee is set by administrative rule. Thus, the department may have to incur the increased cost.

License Application Requirement

Section 626.171, F.S., provides application requirements for licenses as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary. Section 626.211, F.S., requires the DFS to approve a license application prior to the applicant taking the licensure examination if the department believes the applicant meets the license qualifications and the applicant's application is complete. Once the applicant's application is complete, the department must notify the applicant of the examination date and time. Once the applicant takes the licensure examination and passes it, he or she is issued the appropriate license.

The bill amends current law and allows a license applicant to take the licensure examination before submitting their license application or before obtaining approval of their license application. If the applicant takes the licensing test before applying for the license, the department is required to issue the license within 15 days after it approves the license application. If an applicant chooses to take the licensure examination first, the applicant will receive their test results before investing moneys (\$114 maximum for the application submission and fingerprinting) in the application process. The bill's proponents believe allowing license applicants to take the licensure examination before submitting their licensure application or obtaining approval of it will streamline the licensing process to help increase the number of insurance representatives, especially increasing the number of insurance representatives servicing minority communities.

Examination Requirement

Exemptions -- Section 626.221, F.S., sets forth the examination requirements and exemptions for insurance agent, adjuster, and customer representative licenses. At least 13 exemptions from the examination requirement are provided in the statute. If an applicant for licensure as an agent, adjuster, or customer representative meets one of the exemptions, he or she does not have to take the examination associated with the license applied for. One of the exemptions from the adjuster examination is for applicants who have the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in Florida or the designation of Professional Claims Adjuster (PCA) from the Professional Career Institute. Exemptions are provided for these designated adjusters because the DFS approves the curriculum of the educational institutions and ensures the curriculum covers a comprehensive analysis of insurance and included testing at least equal to testing given by the DFS for the all-lines adjuster license.

The bill includes a new adjuster designation in the adjuster examination exemption. Adjusters designated as a Certified Claims Adjuster (CCA) from the Association of Property and Casualty Claims Professionals are exempt from adjuster license examinations.

Prelicensing Courses -- There is no provision in current law requiring an applicant for a license as an insurance representative to take a prelicensing course before being allowed to take the licensing examination. License applicants are only required to have his or her application for licensure approved and to pay the examination fees in order to take the license examination. The bill removes these two requirements and requires applicants for licensure to complete a prelicensing course in order to sit for

the licensure examination. Thus, the only examination prerequisite will be completion of a prelicensing course.

Testing Information and Results -- The bill also adds information for the DFS to request and gather from licensee examinees and requires the department to report specified testing information. The bill requires the department to request license examinees to voluntarily self-report race/ethnicity and gender information. Based on the race/ethnicity and gender information collected, the department is required to prepare, publicly announce, and publish an Examination Report for each examination administered in the year. The Examination Report is due on May 1st and contains pass/fail information and test score information for each examination given on a race/ethnicity and gender basis. An Item Report is also required to be done annually by the department. This report is also due on May 1st and contains statistical information relating to each operational item on each test form administered in the prior year, separated by race/ethnicity, the correct-answer rates, and the correlations.

License examination retention requirements are also added by the bill. The department is also required to reasonably accommodate disabled examinees. According to the DFS, their contract with the testing vendor already requires the vendor to comply with the American with Disabilities Act.

C. SECTION DIRECTORY:

Section 1: Amending s. 626.171, F.S.; requiring fingerprinting of applicants for licensure by the department to be done at all department examination centers.

Section 2: Amending s. 626.211, F.S.; revising circumstances under which the department must notify an applicant about license examinations.

Section 3: Amending s. 626.221, F.S.; expanding the authorized adjuster designations for exemptions from adjuster license examinations.

Section 4: Amending s. 626.231, F.S.; requiring license examinees to take a prelicensing course as a prerequisite for taking the licensing examination.

Section 5: Amending s. 626.261, F.S.; providing for license examinees to voluntarily report race or ethnicity or gender information; requiring the department to prepare and publish examination reports summarizing testing results based on race or ethnicity or gender; requiring records retention of specified testing information by the department; requiring the department to reasonably accommodate disabled examinees.

Section 6: Amends 626.291, F.S.; requiring the DFS to issue a license within 15 days of the DFS's approval of an application if the applicant took the licensing exam prior to submitting their application.

Section 7. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

FY 2006–07

FY 2007-08

1. Revenues:

None.

2. Expenditures:

Recurring

Salaries and Benefits (3 FTE)	\$ 138,607	\$ 138,607
(Salary rate 103,285)		
Expenses	19,209	19,209
Human Resources Services	<u>1,179</u>	<u>1,179</u>
Total – recurring	\$ 158,995	\$ 158,995
Non-Recurring		
OPS	\$ 104,340	
Expenses	\$ 10,029	
Operating Capital Outlay	<u>5,700</u>	
Total – non-recurring	\$ 120,069	
Total Expenditures:		
Insurance Regulatory Trust Fund	\$ 279,064	\$ 158,995

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Being able to get fingerprinted at the testing location would allow applicants to complete more application requirements at one location; however, the fingerprints taken at the examination center would not likely be able to be processed and the results furnished to the DFS before the examination, as is the current process. Thus, applicants may incur an examination fee and then be disqualified for a license based on the criminal background check. Having the criminal background check done before the examination allows the department to notify applicants disqualified for a license due to a criminal history before the applicant incurs the examination fee.

Allowing license applicants to take the license examination before submitting their license application will save applicants money (\$114 maximum for the application submission and fingerprinting).

Requiring license applicants to take a prelicensing course will cost applicants money if the course is not free.

Providing a new exemption from the adjuster examination for adjusters having a CCA designation will save money for those adjusters having the designation as they will no longer incur the testing fee of \$56.

If a testing vendor has to lease additional testing space or has to secure new space to accommodate fingerprinting at the testing centers, then the vendor may have to break an existing lease, incurring a fee for such, or may have increased costs associated with renting additional space.

D. FISCAL COMMENTS:

Unless the department undertakes the fingerprinting process itself at the examination centers, it is not likely the department will derive any additional revenue from allowing fingerprinting at the testing locations. Even if the department does the fingerprinting at testing locations, \$47 of the \$64 fingerprinting fee is paid to the FDLE and the FBI. Accordingly, very little revenue will be generated per applicant. Also, allowing fingerprinting at testing locations is unlikely to increase the number of license applicants; it is primarily a convenience for applicants.

In addition, the following fiscal information was provided by the DFS:¹⁸

According to the department, two new Regulatory Consultant positions are needed due to the bill's provision allowing license testing before the license application is approved. The change in processing applications to allow testing prior to qualifying for a license will require applications to be processed at least twice. It is estimated that this change will increase the workload of the department's Division of Agent and Agency Services at least 20,000 applications the first year and then continue to increase the workload.

In addition, one new Examination Development Specialist (psychometrician) position is needed due to the bill's provisions relating to preparing and publishing information on license testing results. Although the department's testing vendor provides psychometric services for test development, the Bureau must have testing expertise on staff to analyze the data of the reports required in this bill and translate and report that information. It is essential that the department has staff with the knowledge of testing and psychometric science to work with the vendor in the development and revision of test items and forms that will better serve the citizens of Florida. Without this level of testing expertise on the Bureau staff, the results of the statistics may not properly impact the testing program as required by this bill.

The OPS non-recurring funding is needed for changes in contracts to enhance the department's technology systems and the contractor's cost of implementing this legislative change.

Enhancements to Agents Licensing Insurance System (ALIS)	\$ 75,300
Enhancements to Agents and Agencies Licensing Functionality (AALF)	\$ 29,040
Expense/Capital Equipment – non recurring	\$ 15,729
Total Appropriation Required	\$120,069

Enhancements are to modify contractors' programs to change the systems to allow for examination prior to qualification and provide statistical data on examinations. These enhancements have been identified as areas that would change the department's technology systems and the current agreement of services with Promissor, the testing vendor. To implement the provisions of the bill the department and its vendors will need at least six months for design, development and implementation.

Examination Administrator Vendor (Promissor)	
Examination Statistical Reports	\$ 92,000
Enhancements to technology systems	\$ 21,640

In order to pay for the expenses incurred by Promissor to make technological changes, the exam fees will remain at \$56 per exam, rather than be reduced to \$50 per exam (which had been anticipated through a rule change).

If the testing vendor has to acquire additional testing space to accommodate fingerprinting at the testing locations, it may incur additional rental fees. In such a case the testing vendor may pass the increased fees to the department because it cannot pass them to the applicant due to the testing fee being set by administrative rule.

If the department cannot find a private vendor to perform fingerprinting at its testing locations and has to do it in-house to comply with the bill, then the department will incur additional costs associated with the fingerprint processing. These costs include the purchase of 19 fingerprinting machines at \$15,000 each (for a total of \$285,000), the purchase of maintenance contracts on the machines (cost unknown), and the payment of wages to personnel hired to work the fingerprinting processing. The cost of hiring

¹⁸ Fiscal Analysis by the DFS dated April 4, 2006.

personnel is unknown and indeterminate and in part, will depend on the demand for fingerprint processing at the testing location and the length of the testing. The bill does not include an appropriation to the department if it must do fingerprinting in-house. The department believes it will need additional resources to implement the bill, if it cannot find a private vendor to contract with to provide fingerprinting services at examination locations.¹⁹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Insurance Committee considered the bill, adopted a strike-all amendment, and reported it favorably. The strike-all rewrote the fingerprinting requirement in the original bill and added several provisions regarding license examinations and reporting. The added provisions:

- Allow an insurance license applicant to take their licensure exam prior to submitting their license application.
- Require license applicants to complete a pre-licensing course before taking a license exam. Current law does not require a pre-licensing course.
- Require the DFS to make demographic data available to the public via reports identifying the number of examinees, the pass/fail data of examinees, the average scores of examinees, reported by ethnicity and gender.
- Require the DFS to reasonably accommodate any disabled examinees.
- Require the DFS to issue a license within 15 days of the DFS's approval of an application if the applicant took the licensing exam prior to submitting his or her application.
- Allow an adjuster to be exempt from taking the adjuster license examination if he or she has the specified adjuster designation from the Association of Property and Casualty Claims Professionals. Current law allows an exemption from the license examination for adjusters with a different designation.

According to the department, implementation of the strike-all amendment will require three new FTEs and a recurring appropriation from trust fund moneys of \$158,995 associated with the new FTEs. In addition, the department believes \$233,709 in nonrecurring trust fund moneys will have to be spent in fiscal year 2006-2007 on technology improvements needed to implement the bill and on the examination contractor's cost of implementing the bill.

¹⁹ Personal communication received from a representative of the Department of Financial Services, on file with the Insurance Committee.

The staff analysis was updated to reflect the changes made to the bill by the strike-all amendment.

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CHAMBER ACTION

The Insurance Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to insurance agents; amending s. 626.171, F.S.; requiring the Department of Financial Services to require certain examination centers to have fingerprinting facilities; amending s. 626.211, F.S.; revising circumstances under which the department must notify an applicant about examinations; amending s. 626.221, F.S.; expanding the authorized adjuster designations for exemptions from adjuster license examinations; amending s. 626.231, F.S.; revising examination eligibility requirements to require a prelicensing course; deleting certain examination eligibility requirements; amending s. 626.261, F.S.; requiring the department to request examinees to voluntarily report race and gender information; requiring the department to provide certain notice to examinees regarding the provision of race and gender information; requiring the department to prepare, publicly announce, and publish reports of examination statistical information; providing report requirements;

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CODING: Words stricken are deletions; words underlined are additions.

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providing an exception; requiring the department to retain certain examination materials and information; requiring the department to accommodate disabled examinees at examinations; amending s. 626.291, F.S.; requiring the department to issue a license for certain applicants within a specified time period; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 626.171, Florida Statutes, is amended to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary.--

(4) An application for a license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary must be accompanied by a set of the individual applicant's fingerprints, or, if the applicant is not an individual, by a set of the fingerprints of the sole proprietor, majority owner, partners, officers, and directors, on a form adopted by rule of the department and accompanied by the fingerprint processing fee set forth in s. 624.501. Fingerprints shall be used to investigate the applicant's qualifications pursuant to s. 626.201. ~~The~~ Fingerprints shall be taken by a law enforcement agency or other department-approved entity. The department shall require all designated examination centers to have facilities at which to

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52 take fingerprints at the time of an applicant's examination, and
53 fingerprints taken at such time shall be in lieu of the
54 applicant submitting fingerprints with the application.

55 Section 2. Subsection (2) of section 626.211, Florida
56 Statutes, is amended to read:

57 626.211 Approval, disapproval of application.--

58 (2) Upon approval of an applicant for license as agent,
59 customer representative, or adjuster who is subject to written
60 examination and who has not provided proof of passing such
61 examination, the department shall notify the applicant when and
62 where he or she may take the required examination.

63 Section 3. Paragraph (k) of subsection (2) of section
64 626.221, Florida Statutes, is amended to read:

65 626.221 Examination requirement; exemptions.--

66 (2) However, no such examination shall be necessary in any
67 of the following cases:

68 (k) An applicant for license as an adjuster who has the
69 designation of Accredited Claims Adjuster (ACA) from a
70 regionally accredited postsecondary institution in this state,
71 ~~or the designation of Professional Claims Adjuster (PCA) from~~
72 ~~the Professional Career Institute, or Certified Claims Adjuster~~
73 (CCA) from the Association of Property and Casualty Claims
74 Professionals whose curriculum has been approved by the
75 department and whose curriculum includes comprehensive analysis
76 of basic property and casualty lines of insurance and testing at
77 least equal to that of standard department testing for the all-
78 lines adjuster license. The department shall adopt rules
79 establishing standards for the approval of curriculum.

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Section 4. Section 626.231, Florida Statutes, is amended to read:

626.231 Eligibility for examination.--No person shall be permitted to take an examination for license without having first completed a prelicensing course as required by s. 626.7851 until his or her application for the license has been approved and the required fees have been received by the department or a person designated by the department to administer the examination.

Section 5. Subsections (5), (6), (7), and (8) are added to section 626.261, Florida Statutes, to read:

626.261 Conduct of examination.--

(5) The department shall request each examinee to report the following information on a voluntary basis on the answer sheet or application form or by other appropriate means:

(a) Race or ethnicity (African American, Caucasian, American Indian, Asian, Hispanic, or other).

(b) Gender (male or female).

The department shall advise all examinees that they are not required to provide this information, that they will not be penalized for not providing this information, and that the department will use the information provided exclusively for research and statistical purposes and to improve the quality and fairness of the examinations.

(6) No later than May 1 of each year, the department shall prepare, publicly announce, and publish an examination report of summary statistical information relating to each examination

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administered during the preceding calendar year. Each
examination report shall show, with respect to each examination,
for all examinees combined, and separately by race or ethnicity,
by gender, and by race or ethnicity within gender:

(a) The number of examinees.

(b) The percentage and number of examinees who passed each
part.

(c) The percentage and number of examinees who passed all
parts.

(d) The mean scaled scores on each part.

(e) The standard deviation of scaled scores on each part.

No later than May 1 of each year, the department shall prepare
and make available on request an item report of summary
statistical information relating to each operational item on
each test form administered during the preceding calendar year.
The item report shall show the correct-answer rates and
correlations for each operational item for all examinees
combined, and separately for African-American examinees,
Caucasian examinees, American-Indian examinees, Asian examinees,
Hispanic examinees, and other examinees. The department is not
required to report separate statistical information for any
group or subgroup comprising fewer than 50 examinees.

(7) The department shall maintain, for a period of 3 years
after being prepared or used, all registration forms, test
forms, answer sheets, operational items and pretest items, item
analyses, and other statistical analyses relating to the
examinations.

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(8) In administering the examinations, the department shall make such accommodations for disabled examinees as are reasonably warranted by the particular disability involved, including the provision of additional time if necessary to complete an examination or special assistance in taking an examination.

Section 6. Subsection (1) of section 626.291, Florida Statutes, is amended to read:

626.291 Denial, issuance of license.--

(1) Within 30 days after the applicant has completed any examination required under s. 626.221, the department or its designee shall provide a score report; and, if it finds that the applicant has received a passing grade, the department shall within such period notify the applicant and issue and transmit the license to which such examination related. If it finds that the applicant did not make a passing grade on the examination for a particular license, the department or its designee shall within this period provide notice to the applicant to that effect and of its denial of the license. For those applicants who have completed the examination prior to submitting the license application, the department shall issue the license applied for within 15 days after the department has approved the application.

Section 7. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1425

Advisory Council on Condominiums

SPONSOR(S): Brutus

TIED BILLS: None

IDEN./SIM. BILLS: SB 1270

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Civil Justice Committee</u>	<u>5 Y, 0 N</u>	<u>Blalock</u>	<u>Bond</u>
2) <u>Business Regulation Committee</u>	<u>16 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
3) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Rayman</u> <i>SL</i>	<u>Belcher</u> <i>MB</i>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

In 2004, the Legislature created the Advisory Council on Condominiums, in part to receive public input regarding issues of concern with respect to condominiums and recommendations for changes in the condominium law.

The bill provides that the Advisory Council on Condominiums must review part VI of ch. 718, F.S., concerning condominium conversions. The bill requires that the council submit a report to the Legislature by November 30, 2006, which evaluates whether such provisions provide adequate post-purchase protection for purchasers of condominium conversion properties, and that recommends any proposed legislation needed to improve the protection provided by part VI of chapter 718, F.S.

This bill has no fiscal impact on state or local governments.

The bill is effective upon becoming a law

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill adds additional responsibilities for the Advisory Council on Condominiums.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Advisory Council on Condominiums

In 2004, the Legislature created the Advisory Council on Condominiums, in part to receive public input regarding issues of concern with respect to condominiums and recommendations for changes in the condominium law.¹ The issues the council is required to consider include, but are not limited to, the rights and responsibilities of the unit owners in relation to the rights and responsibilities of the association.² The council is also charged with recommending necessary improvements to the education programs offered by the Division of Florida Land Sales, Condominiums, and Mobile Homes and reviewing, evaluating, and advising the division about revisions and adoption of rules affecting condominiums.³ The council is administratively assigned to the division within the Department of Business and Professional Regulation (DBPR).⁴ The members of the council serve on a voluntary basis, but are entitled to receive per diem and travel expenses while on official business.⁵

The Roth Act

In 1980, the Legislature enacted Part VI of the Condominium Act (ch. 718, F.S.), also known as the Roth Act, which addresses condominium conversions.⁶ The Roth Act is the result of a detailed report prepared by James S. Roth, the Director of what was formerly known as the Department of Professional Regulation, Division of Florida Land Sales and Condominiums. The Roth Report recommended that legislation be enacted to provide sufficient time and information so that tenants could make informed decisions about conversion of their rental facilities and protections to purchasing and nonpurchasing tenants.⁷

Part VI of the Condominium Act is devoted exclusively to condominiums which are created when existing improvements are converted to a residential condominium. This part of the Act provides protections to the existing renters in the building and to prospective purchasers of the converted condominium units. Renters are entitled to written notice of the proposed conversion and an option to extend their current lease. Each tenant has the right of first refusal to purchase the unit and the developer must provide basic background information to assist each tenant in evaluating the potential purchase.⁸

¹ Section 5, ch. 2004-345, L.O.F.

² Section 718.50151(2)(a), F.S.

³ Section 718.50151(2)(b) and (c), F.S.

⁴ Section 718.50151(1), F.S.

⁵ *Id.*

⁶ Section 1, ch. 80-3, L.O.F.

⁷ *Florida Condominium Law and Practice*, 3d ed., s. 9.1 (The Florida Bar, 2003).

⁸ Peter M. Dunbar, *The Condominium Concept, A Practical Guide for Officers, Owners and Directors of Florida Condominiums*, 8th ed., s. 2.7, 33-34 (Aras Publishing 2003).

Section 718.616, F.S., requires each developer of a residential condominium to provide to new prospective purchasers and the ultimate owners of converted condominium units the same basic disclosures that are required in all condominium developments.⁹ The developer must disclose the following information concerning the improvements:

- Date and type of construction;
- Prior use;
- Existence of any termite damage or infestation and whether it has been treated properly. A report from a certified pest control operator must substantiate the inspection.

The developer must also disclose the condition for each of the components listed in s. 718.616(3)(a), F.S. The components include the roof, structure, fireproofing and fire protection systems, elevators, heating and cooling systems, plumbing, electrical systems, swimming pools, seawalls, pavement and parking areas, and drainage systems. The developer must also disclose the components age, estimated remaining useful life, estimated current replacement cost, and structural and functional soundness.¹⁰ The disclosure must be substantiated by attaching a copy of a certificate by a Florida licensed architect or engineer under seal.¹¹

The developer is not required to certify that the replacement or renewal meets the requirements of the then-applicable building code. However, for purposes of funding a reserve account, this certification is required. The estimated current replacement cost of the component must be given as a total amount and as a per-unit amount based on each unit's proportional share of the common expenses.¹²

If the proposed condominium is situated within a municipality, the disclosure must include a letter from the municipality that acknowledges that it has been notified of the proposed conversion.¹³

Section 718.618, F.S., requires that once a conversion has taken place, the developer has to create financial safeguards for the condominiums. The developer must either: (1) establish reserve accounts for capital expenditures and deferred maintenance; (2) give implied warranties of fitness and merchantability for a period of three years beginning with the notice of intended conversion and continuing for three years, or the recording of the declaration to condominium and continuing for three years, or one year after owners other than the developer obtain control of the association, whichever occurs later; or (3) post a surety bond in an amount which would be equal to the total amount of all required reserve accounts payable to the association.¹⁴

A recent article on condominium conversions identified several issues regarding the conversion process.¹⁵ The article maintained that the current statutory law offered little protection for consumers and required limited accountability for developers. The article noted that once the condominium association assumes control over the converted condominium, it may face hidden structural problems and problems regarding the reserve accounts. Another criticism identified was that the corporations created for the conversion may be limited liability companies with little assets to be attached when problems arise after the conversion.¹⁶

Compliance with s. 718.618, F.S., does not shield the developer from all liability in connection with the components involved. The statute does not foreclose other legal actions based upon negligence, misrepresentation, strict liability, or similar liability actions.¹⁷

⁹ Section 718.616, F.S.; Rule 61B-24.004(1)(a), F.A.C.

¹⁰ Section 718.616(3)(b), F.S.

¹¹ *Id.*

¹² Section 718.616(3)(b)3., F.S.

¹³ Section 718.616(4), F.S.

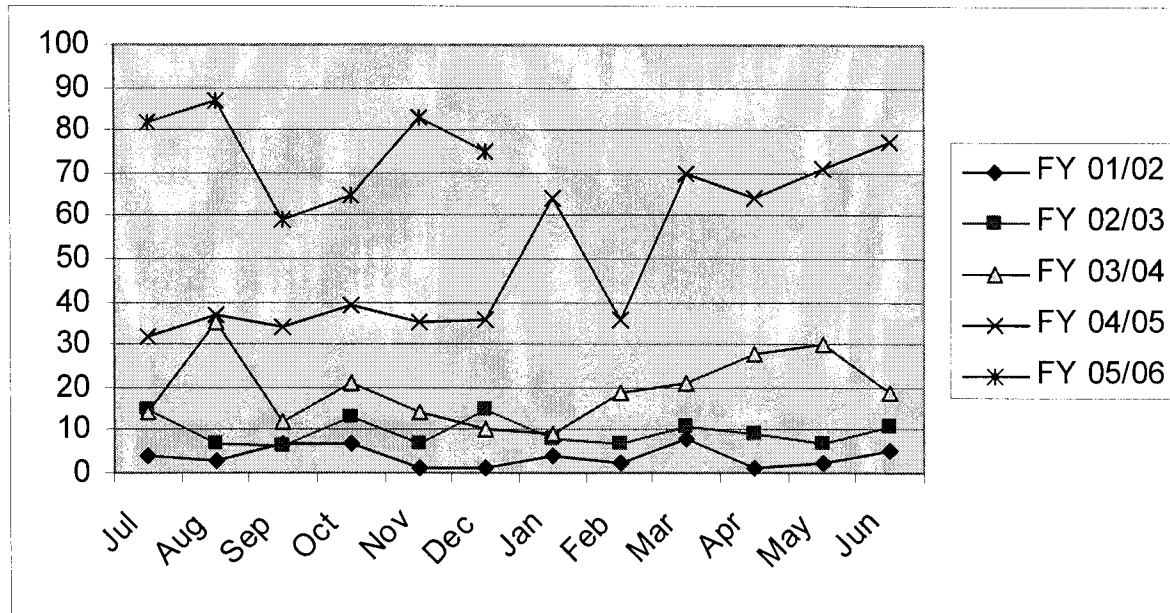
¹⁴ Section 718.618, F.S.

¹⁵ Paola Iuspa-Abbott, "Condo Conversion Blues," *Daily Business Review*, 15 Aug. 2005, A8.

¹⁶ *Id.*

¹⁷ *Supra* at note 8, s. 9.50.

The Division of Florida Land Sales, Condominiums, and Mobile Homes in the DBPR indicated the number of conversions in the table below.



Effect of Bill

The bill directs the Advisory Council on Condominiums to review part VI of ch. 718, F.S., concerning condominium conversions. The bill requires the council to submit a report to the Legislature by November 30, 2006. The report must evaluate whether such provisions provide adequate post-purchase protection for purchasers of condominium conversion properties and recommend any proposed legislation needed to improve the protection provided by part VI of ch. 718, F.S.

In particular, the bill requires that the report examine ss. 718.616 and 718.618, F.S., as they relate to:

- Whether the disclosures required by s. 718.616, F.S., provide adequate information to the purchaser; whether more specific guidelines regarding the contents of the reports should be established; and whether the creation of privity or potential liability between persons who certify such disclosure reports and the unit owners should be addressed; and
- Whether the provisions of s. 718.618, F.S., which require developers to fund reserve accounts or alternatives to such accounts, are adequate or should be modified.

C. SECTION DIRECTORY:

Section 1. Requires the Advisory Council on Condominiums to review certain provisions related to protections of condominium conversions, and requiring a report to the Legislature.

Section 2. Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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1 A bill to be entitled
2 An act relating to the Advisory Council on Condominiums;
3 requiring the Advisory Council on Condominiums to review
4 certain provisions related to protections for purchasers
5 of condominium conversions; requiring a report to the
6 Legislature; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. (1) The Advisory Council on Condominiums,
11 created by s. 718.50151, Florida Statutes, shall review part VI
12 of chapter 718, Florida Statutes, concerning condominium
13 conversions, and shall submit a report to the Legislature by
14 November 30, 2006, which evaluates whether such provisions
15 provide adequate postpurchase protection for purchasers of
16 condominium conversion properties and recommends any proposed
17 legislation needed to improve the protection provided by part VI
18 of chapter 718, Florida Statutes.

19 (2) The report must examine the existing provisions,
20 particularly ss. 718.616 and 718.618, Florida Statutes, as they
21 relate to the following issues:

22 (a) Whether the disclosures required by s. 718.616,
23 Florida Statutes, provide adequate information to the purchaser;
24 whether more specific guidelines regarding the contents of such
25 reports should be established; and whether the creation of
26 privity or potential liability between persons who certify such
27 disclosure reports and the unit owners should be addressed; and

28 (b) Whether the provisions of s. 718.618, Florida

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29 | Statutes, which require developers to fund reserve accounts or
30 | alternatives to such accounts, are adequate or should be
31 | modified.

32 | Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1435
SPONSOR(S): Harrell

Division of Emergency Management of the Department of Community Affairs

TIED BILLS:

IDEN./SIM. BILLS: SB 1888

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N</u>	<u>Brown</u>	<u>Williamson</u>
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u>Dobbs</u> <i>JD</i>	<u>Belcher</u> <i>mb</i>
3) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill provides for a codified direct operational relationship between the Governor and the Division of Emergency Management in carrying out the responsibilities of Chapter 252, F.S., laws related to Emergency Management. The bill provides the division with autonomy for matters involving personnel, purchasing, and budget.

The bill appears to have no fiscal impact.

The bill is effective July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires the Division of Emergency Management to enter into a service agreement with the Department of Community Affairs.

B. EFFECT OF PROPOSED CHANGES:

Structure of Executive Branch

Article IV, Section 1 of the Florida Constitution vests the Governor with supreme executive power. Section 20.18, F.S., creates the Department of Community Affairs (DCA) and establishes the Division of Emergency Management (DEM) as one of the department's units.¹ The State Emergency Management Act² also serves as an establishing clause for the DEM. Chapter 252, F.S., tasks the DEM with coordinating emergency management efforts to ensure effective preparation and use of the state workforce, state resources, and facilities of the state and nation in dealing with any emergency that may occur.³

Statutorily, the operational and administrative chain of command typically flows from the Governor through the Secretary of the Department of Community Affairs to the Director of the Division of Emergency Management. However, under Chapter 252, F.S., the Governor is responsible for meeting the dangers presented to this state and its people by emergencies.⁴ In the event of an emergency beyond the capabilities of local authorities, the Governor may assume direct operational control over all or any part of the emergency management functions within this state. The Governor is authorized to delegate such powers as she or he may deem prudent.⁵

Chapter 252, F.S., assigns responsibility to the Division of Emergency Management for maintaining a comprehensive statewide program of emergency management. This program includes:

- Preparation of a comprehensive statewide emergency management plan;
- Adopting standards and requirements for county emergency management plans;
- Ascertaining the requirements for equipment and supplies for use in an emergency;
- Coordinating federal, state, and local emergency management activities in advance of an emergency; and
- Using and employing the property, services, and resources within the state in accordance with the Florida Emergency Management Act.⁶

In an emergency that is beyond the capability of local authorities, the Governor determines the need to declare a state of emergency. This declaration takes the form of an Executive Order that describes the emergency condition, issues orders, assigns missions, and may delegate certain authority.⁷

For example, Executive Order 05-219⁸ declared a state of emergency for Hurricane Wilma. As part of the Executive Order, the Governor designated the Director of the DEM as the State Coordinating Officer for the duration of the emergency. The Director was authorized to act as the Governor's

¹ Section 20.18(2)(a), F.S.

² Chapter 252, F.S.

³ Section 252.32(2), F.S.

⁴ See generally s. 252.36, F.S.

⁵ Section 252.36(1)(a), F.S.

⁶ Section 252.35, F.S.

⁷ Section 252.36, F.S.

⁸ Available online here: http://sun6.dms.state.fl.us/eog_new/eog/orders/2005/October/05-219-wilma.pdf.

authorized representative and instructed to confer with the Governor to the fullest extent possible. The Director was specifically authorized to:

- Activate the Comprehensive Emergency Management Plan;
- Invoke and administer the Statewide Mutual Aid Agreement;
- Invoke and administer the Emergency Management Assistance Compact;
- Seek direct assistance from any and all agencies of the United States Government as may be needed to meet the emergency;
- Distribute any and all supplies stockpiled to meet the emergency;
- Direct all state, regional and local government agencies, including law enforcement agencies, to identify needed personnel and place them under the direct command of the State Coordinating Officer to meet the emergency; and
- Perform other duties relating to the management of the emergency.

As a result of this and other executive orders, the Governor and the Director of DEM (acting as the State Coordinating Officer) have a direct operational link when operating under an executive order declaring an emergency.

Proposed Changes

The bill requires the Director of the DEM to be appointed by and serve under the direct oversight of the Governor in carrying out the responsibilities of chapter 252, F.S. The bill makes the DEM a budget entity separate from the DCA, with complete autonomy in matters involving personnel, purchasing, and budget while remaining an established unit of the DCA.

The bill requires the DEM to enter into a service agreement with the DCA for "professional, technological, and administrative support services." The bill also requires the DEM to collaborate and coordinate with the department on non-emergency response matters such as recovery programs, grant programs, mitigation programs, and emergency matters relating to comprehensive plans.

C. SECTION DIRECTORY:

Section 1 amends s. 20.18, F.S., to operationally segregate the DEM from the DCA except for administrative purposes.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The DCA reports that the bill will have no fiscal impact, as the changes "codify the existing relationship."⁹

Section 252.371, F.S., establishes the Emergency Management, Preparedness, and Assistance Trust Fund administered by the Department of Community Affairs. The DEM currently performs administration of this trust fund within the DCA. This bill does not appear to conflict with section 252.371, F.S., since the DEM will remain statutorily a unit of the DCA. Further, the bill specifies that the DEM will collaborate and coordinate with the DCA on such matters as grant programs. Emergency management grants and aids to local governments and non-state entities as well as other related programs are funded through this trust fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill introduces a fundamental structural change that does not generally fit within the executive branch structure required by s. 20.14, F.S. That section provides that departments are the "principle administrative unit[s] of the executive branch."¹⁰ Divisions are subsequently defined as "principle unit[s] of the department." Given the Department's statement that the changes have no substantive effect and merely "codify the existing relationship,"¹¹ if the existing relationship does not violate any state or federal statute, it is unclear why this deviation from chapter 20, F.S., is necessary.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

⁹ 2006 Bill Policy Analysis, HB-1435, Florida Department of Community Affairs.

¹⁰ Section 20.14(1), F.S.

¹¹ 2006 Bill Policy Analysis, HB-1435, Florida Department of Community Affairs.

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1 A bill to be entitled

2 An act relating to the Division of Emergency Management of
3 the Department of Community Affairs; amending s. 20.18,
4 F.S.; providing that the director of the Division of
5 Emergency Management shall be appointed by and serve under
6 the oversight of the Governor; providing that the division
7 shall be a separate budget entity and not subject to the
8 control, supervision, or direction of the Department of
9 Community Affairs in matters involving personnel,
10 purchasing, and the budget of the division; authorizing
11 the division to enter into a service agreement with the
12 department for professional, technological, and
13 administrative support services; requiring the division to
14 collaborate and coordinate with the department on all
15 nonemergency response matters; providing an effective
16 date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Paragraph (a) of subsection (2) of section
21 20.18, Florida Statutes, is amended to read:

22 20.18 Department of Community Affairs.--There is created a
23 Department of Community Affairs.

24 (2) The following units of the Department of Community
25 Affairs are established:

26 (a) Division of Emergency Management. The director of the
27 Division of Emergency Management shall be appointed by and shall
28 serve under the oversight of the Governor in carrying out the

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29 responsibilities of chapter 252. The division shall be a
30 separate budget entity and not subject to the control,
31 supervision, or direction of the department in matters involving
32 personnel, purchasing, and the budget of the division. The
33 division shall enter into a service agreement with the
34 department for professional, technological, and administrative
35 support services. The division shall collaborate and coordinate
36 with the department on all nonemergency response matters,
37 including, but not limited to, disaster recovery programs, grant
38 programs, mitigation programs, and emergency matters related to
39 comprehensive plans.

40 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7153 PCB EDTB 06-02 Financial Entities Licensing
SPONSOR(S): Economic Development, Trade & Banking Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee	13 Y, 0 N	Olmedillo	Carlson
1) State Administration Appropriations Committee		Rayman <i>SR</i>	Belcher <i>wnb</i>
2) Commerce Council			
3) _____			
4) _____			
5) _____			

SUMMARY ANALYSIS

The Financial Services Commission (the Commission) and its Office of Financial Regulation (the Office) administer the regulation of mortgage brokers and lenders, consumer finance companies, retail installment sellers, money transmitters and title loan and securities businesses. A number of provisions under each of these program areas have been identified by the Office for clarification and revision to achieve more efficient governance.

The bill makes editorial changes, adjusts cross-references, reorganizes certain sections and removes superfluous language to achieve uniformity, clarification and streamline the processes.

This bill revises a number of regulatory provisions governing mortgage brokers and lenders. The bill provides for:

- Mandated electronic filing of required forms, documents, or files with a provision for hardship situations;
- Clarification that receipt of the appropriate fee is a condition of new and renewal license application completion and that grounds for disciplinary action exists if payment of the fee fails to clear;
- Revision of fingerprint card processing;
- Clarification of when a change in licensee control will trigger the need for a new license;
- Requirements for financial institutions to qualify for an exemption;
- Revision of testing procedures and fees;
- Increase in the fee for a credit check of a loan applicant from \$10 to \$25;
- Elimination of the registration fee (\$30) for Canadian agents if the Canadian Dealer is registered. (Florida is following the national trend, which is not to require registration of Canadian agents.);
- Approval for branch application license;
- Revised accounting standards;
- A reconciliation of conflicts between the 2002 amendments to the Probate Code and provisions of the Banking Code relating to safe-deposit boxes; and
- An award of attorney's fees and costs if, as the result of neglect, a mortgage lender fails to pay any tax or insurance premium and subsequently refuses to pay the difference between a lapsed insurance policy and a new policy required by law.

The bill appropriates \$700,515 from the Regulatory Trust Fund for the Office of Financial Regulation for mortgage broker testing for Fiscal Year 2006-07 which will be funded by fees from applicants. Eliminating the registration fee for Canadian agents will result in a recurring loss of \$53,250 in General Revenue.

The bill provides an effective date of July 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7153a.STAdoc
DATE: 3/29/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill gives the Commission rulemaking authority to prescribe requirements and procedures for obtaining a technological or financial hardship exception relating to electronic filing of forms; rulemaking authority to include guidelines for the destruction, as well as, retention of certain records; the authority to charge for the processing of fingerprint cards; and authority to utilize a third party for the submission of fingerprint cards and fees by electronic means.

Ensure Lower Taxes - The bill allows for an increase in the fee for a credit check of a loan applicant from \$10 to \$25. In addition, it grants the Office rulemaking authority to charge a fee, not to exceed \$100 for electronic testing.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Commission consists of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. The Commission is an independent entity housed within the Department of Financial Services. The Office of Insurance Regulation and the Office of Financial Regulation are under the Commission.¹ The Office is responsible for all activities of the Commission relating to the regulation of financial institutions, finance companies, securities industries, and money transmitters.²

Mortgage brokers and mortgage lenders are regulated under the provisions of ch. 494, F.S. Chapter 516, F.S., regulates consumer finance loans, which are loans of \$25,000 or less and for which the lender charges an interest rate of 18 percent or greater. Securities transactions are regulated under ch. 517, F.S., which also includes the administration of the Securities Guaranty Fund (fund). This fund provides compensation to persons who have suffered monetary damages due to acts committed by a dealer or investment advisor and who meet the statutory requirements for compensation. The Office also has regulatory authority over the following types of retail installment sales covered by ch. 520, F.S.: motor vehicle sales financing, retail installment sales (the purchase of retail goods via installment payments), sales finance companies (companies that acquire home improvement contracts), and home improvement contracts (financing for home improvement through home improvement contracts). Presently, if a mortgage lender fails to timely pay an insurance premium of a property owner, and the payment is not more than 90 days overdue, the insurer must reinstate the insurance policy retroactive to the date of cancellation under the provisions of s. 501.137, F.S. The lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy. If the premium payment is more than 90 days overdue, or if the insurer refuses to reinstate the policy, the lender must pay the difference between the cost of the previous insurance policy and a new, comparable policy for 2 years. There is no provision for the recovery of attorney's fees and costs by the property owner.

Chapter 537, F.S., the Florida Title Loan Act, regulates loans secured by the title to a motor vehicle. Chapter 560, F.S., the Money Transmitters' Code, regulates various money transmitters including payment instrument (check) sellers, foreign currency exchangers, check cashing, funds transmissions (via wire, electronic transfer, etc.), and deferred presentment (providing money in exchange for a person's check, which is to be held for a certain period of time).

The Office currently licenses over 380,000 individuals and businesses in the areas of securities and finance.

Over the past five years, the number of persons seeking licensure through the Office has significantly increased. The number of staff to process applications and renewals, however, has remained constant.

The most significant increases have been in the finance area.

¹ The Office of Insurance Regulation is responsible for the licensure and regulation of insurers and other risk bearing entities. s. 20.121(3), F.S.

² See s. 20.121(3), F.S.

For example:

	<u>FY 2000-01</u>	<u>FY 2004-05</u>	<u>Increase</u>
Mortgage Broker Applications	4,960	19,710	297%
Active Mortgage Broker Licenses	34,128	71,729	110%
Active Finance Licenses (All types)	52,281	90,256	73%

To keep pace with demand, the Office's licensing functions need to be streamlined and technology needs to be used to a greater extent. This bill will fulfill both of these goals.

Effects of proposed changes

GENERAL LICENSING PROVISIONS APPLICABLE TO MULTIPLE CHAPTERS

- 1) Electronic Filing of Forms and Fees. The bill grants the Office rulemaking authority to require electronic filing of forms, documents, and fees. However, it provides that the Commission must reasonably accommodate technological or financial hardship and requirements and procedures for obtaining a technological or financial hardship exemption. Without requiring the industries to use the technology the Office must maintain dual processes, one for paper filings and another for electronic filings.

- 2) Fee. Provides that applications are not deemed received until all required fees are received. Authorizes disciplinary action if fees paid with bad check.

The application fees are as follows:

- Mortgage business schools \$500 (current)
- Mortgage business \$425 (current)
- Mortgage brokers \$200 (current)
- Mortgage business branch offices \$225 (current)
- Mortgage lenders \$575 (current)
- Correspondent mortgage lenders \$500 (current)
- Mortgage lenders' branch offices \$325 (current)
- Transfer of lender's license \$500 (current)
- Consumer finance loans \$625 (current)
- Motor vehicle retail installment seller or operator, retail installment transactions, sales finance company, home improvement finance seller, branch of such businesses \$175 (current)
- Money transmitters fee not to exceed \$1,000 (current). Renewal fee, not to exceed \$500 (current)

- 3) Required documents and destruction of records. Authorizes the Commission to prescribe rules for the destruction of records maintained by licensees. There has been at least one instance of a licensee disposing of intact records by placing them in a dumpster. The Office seeks to prescribe the proper method of disposing of records to protect sensitive consumer information.

All documents required by Commission rule, including training curriculum and materials from mortgage business schools, must be submitted at the time the applicant submits the application or recertification.

- 4) Paper Permits. Eliminates requirement that licensed businesses display their permits. License information is available via the Office's website. (Chapters 494, 516, and 520.)

- 5) "Control person and controlling interest". Provides a definition of "control person" and "controlling interest" as follows:

"Control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to control a company if, with respect to a particular company, that person:

- (a) Is a director, general partner, or officer exercising executive responsibility or having similar status or functions;

(b) Directly or indirectly has the right to vote 10 percent or more of a class of a voting security or has the power to sell or direct the sale of 10 percent or more of a class of voting securities; or

(c) In the case of a partnership, has the right to receive upon dissolution, or has contributed, 10 percent or more of the capital.

"Controlling interest" means possession of the power to direct or cause the direction of the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who directly or indirectly has the right to vote 25 percent or more of the voting securities of a company or is entitled to 25 percent or more of its profits is presumed to possess a controlling interest.

- 6) Current Information about Licensees. Requires licensees to keep the application information current. (Chapters 494, 516, 520, and 560)
- 7) Background checks. Provides authority to inquire into the backgrounds of applicants, officers, directors, and other persons with the power to direct the management of the licensee. (Chapters 494, 516, and 520)
- 8) Fingerprinting. This bill clarifies that the Commission is authorized to prescribe, by rule, that fingerprint cards are required from each officer, director, control person, member, partner, or joint venturer of the applicant and each ultimate equitable owner of 10% or greater interest in the business. The fingerprint cards are required to be taken by an authorized law enforcement agency, not an officer. Presently, the law does not specifically authorize the Commission to prescribe by rule the fingerprint submission process. The bill provides a procedure for fingerprint card processing by the Office. It provides that fingerprint processing costs may be borne by the Office, the employer, or the person subject to the background check. It authorizes the Department of Law Enforcement to submit monthly invoices for fingerprint processing.
- 9) Change in Control. The bill clarifies the procedures with regard to change in control of a business. Currently, a licensee must notify the Office of any change in the form of business or any change in the Officers or directors. The bill authorizes the Office to obtain background information from persons who have not previously undergone review by the Office. The bill also requires any person who intends to obtain a controlling interest in a licensed entity must file a new application. The Commission may prescribe by rule provisions to waive this requirement for individuals who are already licensed or have undergone review by Office. (Chapters 494, 516, 520, and 560).
- 10) Exemptions.
The bill provides that in order to be exempt from the chapter requirements, a state or federal chartered bank, trust company, savings and loan, savings bank, credit union or bank holding company must be regulated under the laws of any state or the federal government of the United States. Banks, bank holding companies, and their subsidiaries that are not regulated by the federal or state government of the United States will no longer qualify for exemptions.

The bill also clarifies that there is no licensing requirement for wholly-owned subsidiaries of state or federal chartered banks or savings and loans whose sole activity is to distribute the lending programs of state or federal chartered banks.

11) Licensing requirements:

The bill requires permit and licensing from the Office, unless specifically exempt, for the following:

- Mortgage business schools that offer or conduct mortgage business training for the purpose of meeting professional continuing education requirements.
- Persons who act as a mortgage brokerage businesses.
- Natural person who acts as an associate for a mortgage lender or correspondent mortgage lender.
- Mortgage lender.
- Correspondent mortgage lender.
- Mortgage lender's branch offices.
- Motor vehicle retail installment seller or operator, retail installment transactions, sales finance company, home improvement finance seller, branch of such businesses
- Money transmitters.

OVERVIEW OF FEES

1. **Mortgage Brokerage Test.** Authorizes the Office to outsource the mortgage broker test at a cost to the applicant not to exceed \$100. Currently, the cost of the test is included in the application fee and Office staff administers the test once a month at limited locations. The fee will be used to contract with a vendor to develop an electronic version of the test to be given at testing centers located throughout the state.

In 2004, the Office participated in a competitive procurement with the Department of Financial Services to secure a vendor for this test in anticipation of last year's bill passing. The three responses for the mortgage broker test were \$42, \$43 and \$53. The State of North Carolina recently entered into a contract with a vendor to provide a similar test at a cost of \$100. It is estimated the cost of the computerized test will be \$60-75 per test based on the previous bids and the experience of North Carolina.

2. **Investigation Fee – Consumer Finance.** Increases the investigation fee that consumer finance companies can charge their customers from \$10 to \$25. This fee has not been increased since it took effect on 7-1-1994.

3. **Registration Fee - Canadian Securities Agents.** Eliminates the registration fee (\$30) for Canadian agents if the Canadian Dealer is registered. Florida is following the national trend, which is not to require registration of Canadian agents. Other states:

- 19 states: no filing required/exemption self-executing/no fees collected by state
- 19 states: notice filing required for the dealer only/no fees collected by state
- 7 states: require registration of both dealer and agents/initial application and renewal fees apply
- 5 states: exemption under consideration

4. **Investment Adviser Registration through IARD.** State-registered investment advisers will be required to register via the Investment Adviser Registration Depository (IARD), a nationwide electronic filing system operated by the National Association of Securities Dealers (NASD). Since the IARD system came online in 2001, forty-seven (47) states have mandated electronic filing through the system. Applicants will pay the NASD an initial system fee of \$150 and an annual fee of \$70, which is collected to operate and maintain the IARD system, in addition to the annual state application fee of \$200. Revenues to the State will be unchanged. Florida currently has 1,100 state-registered Investment Advisers. Six hundred and eighty (680) of these advisers have already voluntarily converted their information to the IARD and paid the initial fee. Therefore, there are only 420 licensees that will need to register with the IARD.

5. **Fingerprinting.** Currently the Office may require each Officer, director or ultimate equitable owner to submit a fingerprint card. The bill expands this requirement to include a control person, member, partner or joint venturer of the applicant. It is not possible to estimate the number of individuals that would be impacted by the requirement. The cost per person would be established at the cost charged by FDLE, which is currently \$47 each for processing criminal history checks.

INDUSTRY SPECIFIC ISSUES

Chapter 494 - Mortgage Brokerage and Lending

1. Uniform Forms. Authorizes the Commission to adopt by rule uniform license application and renewal forms for mortgage brokerage businesses, lenders, and individuals.
2. Disciplinary Action. Provides grounds for disciplinary action in the event of a final judgment in a civil action for fraud, embezzlement, misrepresentation, or deceit. The bill also provides grounds for disciplinary action in the event of any adverse finding or decision as the result of any administrative or civil action against the applicant or licensee that relates to the financial services industry. These provisions are necessary in order to adopt the uniform forms.
3. Continuing Education. Waives continuing education requirements for the first renewal cycle immediately following licensure for mortgage brokers and principal representatives. The bill clarifies that the educational requirements contained in this section for mortgage lenders, correspondent mortgage lenders, and

mortgage lenders pursuant to a savings clause are for "continuing" education and must occur before the renewal of their respective licenses.

4. Principal Representative. Allows a newly designated principal representative 90 days in which to complete classroom and testing requirements. The continuing education requirements for a principal representative are waived for the license renewal of a correspondent mortgage lender, mortgage lender, or mortgage lender pursuant to a savings clause for the biennial license period immediately following the period in which the principal representative completed the 24 hours of classroom education and passed a written test in order to qualify to be a principal representative.
5. Application for waiver. The bill provides the Commission with rulemaking authority to adopt rules for the waiver of the application required by the relevant chapters if the person or group of persons proposing to purchase or acquire a controlling interest in a licensee has previously complied with the provisions of the applicable chapters with respect to the same legal entity or is currently licensed by the Office under this chapter.
6. Mortgage Business Schools. Requires permitted mortgage business schools to electronically report the names of students who have successfully completed required training courses. Clarifies the renewal process by specifying the renewal cycle. The permit expires on September 30th of each year. The bill requires that the license for a branch office be renewed in conjunction with a mortgage brokerage business license and authorizes the Commission to adopt certain renewal forms by rule and requires that the renewal forms be submitted to the office or organization designated by the Commission. The forms must be in a compatible computer-readable form and must comply with the requirements of the chapter.
7. Transfer applications. As of October 1, 2006, new requirements are mandated for transfer applications on or after that date. The requirements are as follows: 1) To provide proof that the applicant's principal representative qualifies for waiver; and 2) An applicant's principal representative must pass all testing requirements for lenders.

Chapter 516 – Consumer Finance

1. Liquid Assets. Clarifies that applicants must provide evidence of liquid assets of at least \$25,000. (See amendments to s. 516.03, F.S.) The failure to meet this requirement is currently grounds for denial of licensure and disciplinary action under s. 516.07(1)(b).

Chapter 517 – Securities

1. Branch Office. Amends the definition of "branch office" to conform to uniform federal standard recently adopted by the Securities and Exchange Commission.
2. Registration. Amends s. 517.12, F.S., to remove the requirement that the registration form be verified under oath.
3. Securities Guaranty Fund. Amends ch. 517, F.S., to authorize the Office to prescribe rules for the procedures, form of submissions and guidelines of notices and claims.
4. Payment from the Fund. Requires a claimant who satisfies a judgment described in s. 517.131(3)(a), F.S., to reimburse the fund all amounts paid to the claimant on the claim and gives the Commission rulemaking authority to specify the procedures for complying with this section.
5. Branch Offices - Renewal Cycle. Changes renewal deadline for branch offices from March 31st to December 31st to allow renewal fees to be submitted through NASD.
6. Uniform Forms. Authorizes the Commission to adopt by rule uniform forms that have been approved by the Securities and Exchange Commission. A list of uniform forms is provided in the bill (e.g., Uniform Branch Office Form). These provisions are needed to address recent concerns by the Joint Administrative Procedures Committee.

7. Canadian Dealers. Revises the registration process for Canadian Dealers and eliminates the registration requirements for Canadian agents under certain conditions.
8. Investment Advisers. Requires filings through Investment Adviser Registration Depository (IARD) for state registered Investment Advisers.

Chapter 560 – Money Transmitters

1. Control of money transmitter. Provides that a person has control over a money transmitter if the individual, partnership, corporation, trust, or other organization: 1) possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. It also creates a presumption that a person has control of a company under certain circumstances; 2) The Office determines, after notice and opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the activities of the money transmitter.
2. Permissible investments. Clarifies that the permissible investments mandated by the section must be calculated in accordance with accounting principles generally accepted in the United States.
3. Registration terms. Provides for a 24-month renewal of a registration by furnishing information and fees required by Commission rule. Currently, the section requires the Office to renew registration upon the receipt of a completed renewal form and payment of the nonrefundable fee.

Miscellaneous

1. Safe Deposit Boxes. Reconciles conflicts between the 2002 amendments to the Probate Code and provisions of the Banking Code relating to safe-deposit boxes.
2. Escrow Accounts. Provides an award of attorney's fees and costs if, as the result of neglect, a mortgage lender fails to pay taxes or insurance premiums from an escrow account, and subsequently refuses to pay the difference between a lapsed insurance policy and a new one.
3. Appropriation. Provide an appropriation amount for the Fiscal Year 2006-2007 from the Regulatory Trust Fund to the Office of Financial Regulation for the purpose of implementing the provisions of s. 494.033(2)(d), F.S., for third party administration of the mortgage broker test.

C. SECTION DIRECTORY:

Section 1: Amends s. 494.001, F.S., to create a definition for "control person."

Section 2: Amends s. 494.0011, F.S., providing the ability for the Commission of Financial Services to mandate electronic filings; allowing alternate means for hardships; and providing that the granting of a license must be pursuant to s. 120.60, F.S.

Section 3: Amends s. 494.0016, F.S., prescribing rules for the destruction of records.

Section 4: Amends s. 494.0029, F.S., establishing provisions for received applications and permits.

Section 5: Amends s. 494.00295, F.S., providing clarification and waiver relating to continuing education programs.

Section 6: Amends s. 494.003, F.S., providing exemptions from mortgage broker provisions for certain institutions.

Section 7: Amends s. 494.0031, F.S., relating to licensure as a mortgage brokerage business.

Section 8: Amends s. 494.0032, F.S., relating to renewal of mortgage business license or branch office license.

Section 9: Amends s. 494.0033, F.S., relating to mortgage broker's license.

Section 10: Amends s. 494.0036, F.S., relating to mortgage brokerage business branch offices.

Section 11: Amends s. 494.0039, F.S., relating to mortgage brokerage business principal place of business requirement.

Section 12: Amends s. 494.004, F.S., relating to requirements of mortgage brokerage licensees.

Section 13: Amends s. 494.0041, F.S., relating to administrative penalties and fines for licenses and permits.

Section 14: Amends s. 494.006, F.S., providing exemptions relating to mortgage lenders.

Section 15: Amends s. 494.0061, F.S., to provide licensing, exemptions, fingerprinting, and testing requirements for mortgage lenders.

Section 16: Amends s. 494.0062, F.S., relating to license requirements for correspondent mortgage lenders.

Section 17: Amends s. 494.0064, F.S., relating to educational requirements of mortgage lender's license.

Section 18: Amends s. 494.0065 F.S., relating to transfer applications.

Section 19: Amends s. 494.0066, F.S., relating to mortgage brokerage branch office licensing.

Section 20: Amends s. 494.0067, F.S., relating to continuing education requirements for licensees.

Section 21: Amends s. 494.0072, F.S., relating to disciplinary action for transmission of funds which fail to clear.

Section 22: Amends s. 494.00721, F.S., relating to mortgage lender net worth.

Section 23: Amends s. 501.137, F.S., relating to mortgage lender's payment of insurance premiums from escrow funds.

Section 24: Amends s. 516.01, F.S., to create a definition of "control person".

Section 25: Amends s. 516.03, F.S., relating to consumer finance loan applications.

Section 26: Amends s. 516.031, F.S., increasing the fee for a credit check for a loan applicant.

Section 27: Amends s. 516.05, F.S., relating to consumer finance loan licensing, removing a requirement for the Office to return fees under certain circumstances.

Section 28: Amends s. 516.07, F.S., providing violations for consumer finance loan permit funds failing to clear the applicant's financial institution.

Section 29: Repeals s. 516.08, F.S., relating to posting licenses.

Section 30: Amends s. 516.12, F.S., relating to the mandated destruction of accounts and records by consumer finance loaners.

Section 31: Amends s. 516.19, F.S., relating to penalties.

Section 32: Amends s. 517.021, F.S., to provide a new definition of “branch office.”

Section 33: Amends s. 517.051, F.S., relating to accounting principles for securities transactions.

Section 34: Amends s. 517.061, F.S., relating to exempt securities transactions.

Section 35: Amends s. 517.081, F.S., relating to accounting principles within registration procedure for securities transactions.

Section 36: Amends s. 517.12, F.S., relating to fingerprinting provisions, renewing branch office registrations, and revising requirements relating to activities of Canadian dealers.

Section 37: Amends s. 517.131, F.S., relating to submissions, notices, and claims from the Securities Guaranty Fund.

Section 38: Amends s. 517.141, F.S., relating to payment from the Securities Guaranty Fund; providing the Commission with rule making authority for compliance.

Section 39: Amends s. 517.161, F.S., relating to suspension of registration for a securities transactions dealer.

Section 40: Amends s. 520.02, F.S., to provide a definition for “control person”.

Section 41: Amends s. 520.03, F.S., relating to applications for motor vehicle retailer licenses.

Section 42: Amends s. 520.31, F.S., to provide a definition for “control person”.

Section 43: Amends s. 520.32, F.S., relating to applications for retail installment sales licenses.

Section 44: Amends s. 520.52, F.S., relating to applications for installment sales finance licenses.

Section 45: Amends s. 520.61, F.S., to provide a definition for “control person.”

Section 46: Amends s. 520.63, F.S., relating to applications for home improvement sales finance licensees.

Section 47: Amends s. 520.994, F.S., providing exemptions for financial hardship for applications for retail installment sales.

Section 48: Amends s. 520.995, F.S., relating to disciplinary action for funds that fail to clear an applicant's financial institution.

Section 49: Amends s. 520.997, F.S., relating to destruction of books, accounts and records retained by a retail installment sales licensee.

Section 50: Amends s. 520.999, F.S., relating to requirements of licensees, waivers, and providing a definition for “control interest.”

Section 51: Amends s. 537.009, F.S., relating to destruction of books, accounts, and records retained by title loan companies.

Section 52: Amends s. 559.9232, F.S., relating to correction of cross references.

Section 53: Amends s. 560.105, F.S., relating to electronic forms for money transmitters.

Section 54: Amends s. 560.114, F.S., relating to disciplinary actions for money transmitters whose application fee fails to clear the financial institution.

Section 55: Amends s. 560.121, F.S., relating to destruction of books, accounts, and records retained by title money transmitters.

Section 56: Amends s. 560.126, F.S., relating to significant events and notice required for money transmitters.

Section 57: Amends s. 560.127, F.S., relating to control of money transmitters.

Section 58: Amends s. 560.205, F.S., relating to fingerprinting for money transmitters.

Section 59: Amends s. 560.207, F.S., relating to renewal of registration for money transmitters.

Section 60: Amends s. 560.210, F.S., relating to permissible investments.

Section 61: Amends s. 560.211, F.S., relating to money transmitters' records.

Section 62: Amends s. 560.305, F.S., gives Commission rulemaking authority to require certain information from applicant.

Section 63: Amends s. 560.306, F.S., relating to fingerprinting for check cashers.

Section 64: Amends s.560.308, F.S., relating to registration renewal for check cashers.

Section 65: Amends s. 560.310, F.S., relating to providing rule making for Commission for records of check cashers.

Section 66: Amends s. 560.403, F.S., relating to reinstatement of application for deferred presentment providers.

Section 67: Amends s. 655.935, F.S., relating to the initial opening of a safe deposit box.

Section 68: Amends s. 655.936, F.S., relating to delivery of safe deposit box contents.

Section 69: Amends s. 655.937, F.S., relating to access to a safe deposit box leased or rented in two or more names.

Section 70: Amends s. 733.6065, F.S., relating to opening of a safe deposit box.

Section 71: Appropriates \$700,515 to the Office.

Section 72: Provides an effective date of October 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

FY 2006-07

FY 2007-08

1. Revenues:

Recurring

Regulatory Trust Fund

Mortgage Broker Test Fees	\$ 700,515	\$1,401,030
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General Revenue

Canadian Securities Agent

Registration Fees	(\$ 53,250)	(\$ 53,250)
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(Canadian Securities agents will no longer be required to register – 1775 x \$30 annually)

2. Expenditures:

FY 2006-07

FY 2007-08

Recurring

Regulatory Trust Fund

OPS

(Mortgage Broker Test)	\$ 700,515	\$1,401,030
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Non-Recurring

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Mortgage Broker Testing (cost to applicants if transferred to a third party vendor for administration)

FY 2006-07

FY 2007-08

\$ 700,515	\$1,401,030
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It is not possible to predict the offsetting benefit to the private sector of allowing quicker entry into business due to more frequent testing and immediate scoring. However, it is estimated that each additional day to get registered costs the individual \$98.63 in income (average salary of \$36,000 divided by 365 days = \$98.63). During first quarter of fiscal year 05-06, an average of 2,339 applicants took the test each month, so each 1-day delay costs a total of \$230,696 in lost wages, or \$6,920,867 for the 30-day delay currently between tests. It is also anticipated more test sites would be available than currently, reducing the applicants' travel expense to take the test.

IARD Registration

The proposed language will require all state-registered investment advisers (IAs) to register via the Investment Adviser Registration Depository (IARD), a nationwide electronic filing system operated by the National Association of Securities Dealers (NASD). Applicants will pay the NASD an initial system fee of \$150 and an annual fee of \$70 which is collected to operate and maintain the IARD system, in addition to the state application fee of \$200 annually. Revenues to the State will be unchanged. Florida currently has 1100 state-registered IAs, of which 680 have already converted their information to IARD and paid the initial fee. The remaining 420 will be required to file (total cost \$63,000) and all 1100 will be required to pay \$70 annually, a total of \$77,000. Additionally, the Office received 182 new applications for state-registered IAs last year, of which 150 were approved. This represents an additional cost to the industry of \$27,300 (182 x \$150) in their first year and \$10,500 (150 x \$70) on an on-going basis. Filing the information with IARD allows the Office to share registration information with other states and federal authorities related to state-registered IAs, and allows faster processing of applications and "one-stop" filing for the industry.

Canadian Dealers and Agents

The fees will remain unchanged for Canadian dealers, although the registration process will change. However, the Canadian agents currently registered with the State, will no longer be required to register. Currently there are 1775 Canadian agents registered. This will represent a savings to them of \$30 each, or \$53,250, with a resulting loss to the State General Revenue Fund.

Increase in Maximum Fee Permitted to Be Charged by Lender

Language is being proposed to allow an increase in the fee that a lender may charge the customer as an investigative fee for a consumer finance loan from the current \$10 to \$25 (ss. 516.03(3), F.S.). Potential volume of customers affected is not known.

Fee Increase for Credit Check of a Loan Applicant

The bill authorizes an increase in the fee for a credit check of a loan applicant from \$10 to \$25. The Office has not evaluated the effects of this increase.

D. FISCAL COMMENTS:

Mortgage Broker Testing

Under current statute, the Office only administers the Mortgage Broker test once a month. Under the proposed language, the Office may promulgate a rule to allow a third party to administer the test via computer. This would allow applicants to schedule a date, time and location more convenient to them. The applicant would immediately receive their score to know whether they need to retake the test. Under the proposal, the applicant could reschedule an immediate retake if necessary, rather than waiting until the following month to retake the test. This would allow them to obtain their mortgage broker license more quickly and enter business without unnecessary delays.

During Fiscal Year 2004-05, a total of 20,756 applicants took the test. The possible range based on \$60 to \$75 per test is \$1,245,360 to \$1,556,700, with an average cost of \$67.50 x 20,756 equal to \$1,401,030 (reduced to \$700,515 in the first year based on a January 1 effective date). It is anticipated the fee will be established equal to the cost charged by the vendor for the test. Thus, the anticipated revenue and expenditures should offset each other. The issue will be self-funding and not produce any excess revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULEMAKING AUTHORITY:

The bill gives the Commission rulemaking authority to prescribe requirements and procedures for obtaining a technological or financial hardship exception relating to electronic filing of forms; rulemaking authority to include guidelines for the destruction, as well as, retention of certain records; the authority to charge for the processing of fingerprint cards; and authority to utilize a third party for the submission of fingerprint cards and fees by electronic means.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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1 A bill to be entitled
2 An act relating to financial entities and transactions;
3 amending s. 494.001, F.S.; defining the term "control
4 person"; amending s. 494.0011, F.S.; authorizing the
5 Financial Services Commission to require electronic
6 submission of forms, documents, or fees; providing a
7 limitation; authorizing the commission to adopt rules
8 accommodating a technological or financial hardship;
9 requiring that a grant or denial of a license be in
10 accordance with ch. 120, F.S.; amending s. 494.0016, F.S.;
11 authorizing the commission to prescribe requirements for
12 destroying books, accounts, records, and documents;
13 amending s. 494.0029, F.S.; requiring that certain
14 entities who offer or conduct mortgage business training
15 obtain a permit; providing requirements and procedures for
16 obtaining a permit; specifying that permits are not
17 transferable or assignable; providing for expiration and
18 recertification of permits; authorizing permit fees;
19 requiring that curriculum, training, and training
20 materials be available for inspection; requiring
21 electronic notification to the office of persons who have
22 successfully completed certain education requirements;
23 requiring the commission to adopt rules; amending s.
24 494.00295, F.S.; revising professional education
25 provisions to apply to continuing education; providing
26 requirements; waiving such requirements for license
27 renewals for certain persons under certain circumstances;
28 amending s. 494.003, F.S.; revising the list of entities

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29 exempt from certain mortgage broker licensure
 30 requirements; amending s. 494.0031, F.S.; requiring
 31 licensure of mortgage brokerage businesses; revising
 32 requirements and procedures for issuing licenses;
 33 providing duties and authority of the commission and
 34 office; providing duties of the Department of Law
 35 Enforcement; specifying that certain licenses are not
 36 transferable or assignable; revising the grounds on which
 37 a license may be denied; deleting certain provisions
 38 relating to cancellation and reinstatement of licenses;
 39 amending s. 494.0032, F.S.; requiring renewal of branch
 40 office licenses with renewal of mortgage brokerage
 41 business licenses; amending s. 494.0033, F.S.; revising
 42 mortgage broker licensure requirements and procedures;
 43 authorizing the commission to prescribe additional testing
 44 fees; authorizing the commission to waive certain
 45 examination requirements under specified circumstances;
 46 providing duties and authority of the commission and
 47 office; providing duties of the Department of Law
 48 Enforcement; deleting provisions relating to cancellation
 49 and reinstatement of licenses; amending s. 494.0036, F.S.;
 50 revising mortgage brokerage business branch office
 51 licensure requirements and procedures; deleting a
 52 requirement for displaying licenses; amending s. 494.0039,
 53 F.S.; deleting mortgage brokerage business change of
 54 address reporting and license display requirements;
 55 amending s. 494.004, F.S.; revising mortgage broker
 56 licensee requirements; providing requirements for

57 acquiring a controlling interest in a licensee; providing
58 a definition; providing duties and authority of the
59 commission; authorizing the office to bring an
60 administrative action under certain circumstances;
61 amending s. 494.0041, F.S.; specifying additional grounds
62 for taking disciplinary action; amending s. 494.006, F.S.;
63 revising the list of entities exempt from mortgage lender
64 licensure requirements; amending s. 494.0061, F.S.;
65 requiring the licensure of mortgage lenders; revising
66 mortgage lender license requirements and procedures;
67 providing duties and authority of the commission and
68 office; providing duties of the Department of Law
69 Enforcement; providing for commission rules; revising
70 provisions governing grounds for imposing discipline;
71 deleting certain provisions relating to cancellation and
72 reinstatement of licenses; authorizing the commission to
73 prescribe additional testing fees; revising provisions
74 governing principal representatives; amending s. 494.0062,
75 F.S.; requiring licensure of correspondent mortgage
76 lenders; revising correspondent mortgage lender license
77 requirements and procedures; providing duties and
78 authority of the commission and office; providing duties
79 of the Department of Law Enforcement; providing
80 educational requirements for principal representatives;
81 revising grounds for disciplinary action; deleting certain
82 provisions relating to cancellation and reinstatement of
83 licenses; authorizing the commission to prescribe
84 additional testing fees; providing for commission rules;

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85 amending s. 494.0064, F.S.; revising mortgage lender
86 branch office licensee professional continuing education
87 requirements; amending s. 494.0065, F.S.; revising saving
88 clause requirements and procedures; revising the duties
89 and authority of the office and commission; providing
90 duties of the Department of Law Enforcement; providing for
91 commission rules; providing requirements for education and
92 testing for certain principal representatives and for
93 transfer applications; authorizing the commission to
94 prescribe additional testing fees; revising provisions
95 governing the denial of transfers; providing personal
96 representative designation requirements; amending s.
97 494.0066, F.S.; revising branch office licensure
98 requirements; providing for commission rules; amending s.
99 494.0067, F.S.; deleting a license display requirement;
100 providing information reporting requirements; providing
101 requirements for acquiring a controlling interest in a
102 licensee; providing a definition; providing duties and
103 authority of the commission; authorizing the office to
104 bring an administrative action under certain
105 circumstances; revising professional continuing education
106 requirements; amending s. 494.0072, F.S.; providing
107 additional grounds for taking disciplinary action;
108 amending s. 494.00721, F.S.; conforming cross-references;
109 amending s. 501.137, F.S.; providing mortgage lender
110 liability for attorney's fees and costs for certain
111 violations; amending s. 516.01, F.S.; defining the term
112 "control person"; amending s. 516.03, F.S.; revising

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113 requirements and procedures for issuing consumer finance
 114 loan licenses; specifying certain fees as nonrefundable;
 115 authorizing the commission to adopt rules; revising
 116 certain fee requirements; providing for technological or
 117 financial hardship exemptions under certain circumstances;
 118 amending s. 516.031, F.S.; increasing a reimbursement
 119 charge for certain investigation costs; amending s.
 120 516.05, F.S.; revising investigation procedures; deleting
 121 provisions relating to certain fees for licenses that have
 122 been denied; providing licensee information reporting
 123 requirements; providing requirements for acquiring a
 124 controlling interest in a licensee; providing a
 125 definition; providing duties and authority of the
 126 commission and office; providing for commission rules;
 127 authorizing the office to bring an administrative action
 128 under certain circumstances; deleting provisions
 129 authorizing the office to grant temporary licenses;
 130 amending s. 516.07, F.S.; providing an additional ground
 131 for taking disciplinary action; repealing s. 516.08, F.S.,
 132 relating to requirements for posting a license; amending
 133 s. 516.12, F.S.; authorizing the commission to adopt rules
 134 specifying the minimum information to be shown in a
 135 licensee's books, accounts, records, and documents and the
 136 requirements for destroying a licensee's books, accounts,
 137 records, and documents; amending s. 516.19, F.S.;
 138 correcting cross-references; amending s. 517.021, F.S.;
 139 redefining the term "branch office"; authorizing the
 140 commission to adopt rules; amending s. 517.051, F.S.;

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141 revising required accounting principles; amending s.
 142 517.061, F.S.; revising a provision governing exempt
 143 transactions; amending s. 517.081, F.S.; revising required
 144 accounting principles; amending s. 517.12, F.S.; revising
 145 requirements and procedures for registration of dealers,
 146 associated persons, investment advisers, and branch
 147 offices; revising duties and authority of the commission
 148 and office; providing for commission rules; providing
 149 duties of the Department of Law Enforcement; revising
 150 requirements, procedures, and exemptions relating to
 151 activities of Canadian dealers and associated persons;
 152 providing for certain fees; providing that certain fees
 153 are nonrefundable; providing for the collection of fees;
 154 amending s. 517.131, F.S.; revising criteria under which
 155 recovery can be made from the Securities Guaranty Fund;
 156 authorizing the commission to adopt rules; amending s.
 157 517.141, F.S.; revising requirements for claimant
 158 reimbursements to the fund; authorizing the commission to
 159 adopt rules; amending s. 517.161, F.S.; revising a ground
 160 for a registration adverse action; providing an additional
 161 ground; amending ss. 520.02, 520.31, and 520.61, F.S.;
 162 defining the term "control person"; amending ss. 520.03,
 163 520.32, 520.52, and 520.63, F.S.; revising requirements
 164 and procedures for licensing motor vehicle retail
 165 installment sellers, retail installment transaction retail
 166 sellers, sales finance companies, and home improvement
 167 finance sellers; revising duties and authority of the
 168 commission and office; specifying certain fees as

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169 nonrefundable; amending s. 520.994, F.S.; revising
 170 commission authority to adopt rules to include electronic
 171 submissions; providing for accommodating a technological
 172 or financial hardship; amending s. 520.995, F.S.;
 173 providing an additional ground for taking disciplinary
 174 action; revising a provision applying disciplinary actions
 175 to certain persons; amending s. 520.997, F.S.; revising
 176 commission authority to adopt rules relating to a
 177 licensee's books, accounts, records, and documents;
 178 creating s. 520.999, F.S.; providing additional
 179 requirements of licensees in sales and finance;
 180 authorizing the office to bring an administrative action
 181 under certain circumstances; authorizing the commission to
 182 adopt rules; amending s. 537.009, F.S., relating to the
 183 Florida Title Loan Act; revising provisions relating to a
 184 licensee's books, accounts, records, and documents;
 185 amending s. 559.9232, F.S.; correcting cross-references;
 186 amending s. 560.105, F.S., relating to the Money
 187 Transmitters' Code; authorizing the commission to adopt
 188 rules for electronic submission of money transmitter
 189 licensee forms, documents, or fees; providing for
 190 exemptions due to technological or financial hardship;
 191 amending s. 560.114, F.S.; providing an additional ground
 192 for taking disciplinary action; amending s. 560.121, F.S.;
 193 authorizing the commission to adopt rules relating to a
 194 licensee's books, accounts, records, and documents;
 195 amending s. 560.126, F.S.; revising information reporting
 196 requirements; providing requirements for acquiring a

197 controlling interest; authorizing the office to bring an
198 administrative action under certain circumstances;
199 authorizing the commission to adopt rules; amending s.
200 560.127, F.S.; revising criteria for determining control
201 over a money transmitter; deleting provisions regulating
202 the acquisition or purchase of a money transmitter;
203 amending s. 560.205, F.S.; revising requirements and
204 procedures for registering money transmitters; revising
205 duties of the commission and office; providing duties of
206 the Department of Law Enforcement; amending s. 560.207,
207 F.S.; revising requirements and procedures for renewing a
208 registration; authorizing the commission to adopt rules;
209 providing that specified fees are nonrefundable; providing
210 conditions for reinstating a registration; providing an
211 additional fee; providing for expiration of registration;
212 amending s. 560.210, F.S.; revising required accounting
213 principles; amending s. 560.211, F.S.; revising certain
214 recordkeeping requirements; amending s. 560.305, F.S.,
215 relating to the Check Cashing and Foreign Currency
216 Exchange Act; revising requirements and procedures for
217 registration; amending s. 560.306, F.S.; revising
218 fingerprinting requirements and procedures; providing
219 duties of the office and Department of Law Enforcement;
220 amending s. 560.308, F.S.; revising requirements for
221 renewal of registration; providing for expiration of
222 registration; providing that specified fees are
223 nonrefundable; providing conditions for reinstatement of a
224 registration; amending s. 560.310, F.S.; revising certain

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recordkeeping requirements; amending s. 560.403, F.S.;
revising requirements for registration renewal notices of
intent; providing that specified fees are nonrefundable;
providing conditions for reinstatement of a notice of
intent; amending s. 655.935, F.S.; authorizing the search
of a safe-deposit box co-leased by a decedent; providing
construction; amending s. 655.936, F.S.; providing for the
delivery of a safe-deposit box to a court-appointed
personal representative; amending s. 655.937, F.S.;
revising provisions for access to safe-deposit boxes;
providing a penalty; amending s. 733.6065, F.S.; revising
provisions relating to the initial opening of certain
safe-deposit boxes; providing an appropriation; providing
an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (9) through (30) of section
494.001, Florida Statutes, are redesignated as subsections (10)
through (31), respectively, and a new subsection (9) is added to
that section to read:

494.001 Definitions.--As used in ss. 494.001-494.0077, the
term:

(9) "Control person" means an individual, partnership,
corporation, trust, or other organization that possesses the
power, directly or indirectly, to direct the management or
policies of a company, whether through ownership of securities,
by contract, or otherwise. A person is presumed to control a

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company if, with respect to a particular company, that person:

(a) Is a director, general partner, or officer exercising executive responsibility or having similar status or functions;

(b) Directly or indirectly may vote 10 percent or more of a class of voting securities or sell or direct the sale of 10 percent or more of a class of voting securities; or

(c) In the case of a partnership, may receive upon dissolution or has contributed 10 percent or more of the capital.

Section 2. Subsection (2) of section 494.0011, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

494.0011 Powers and duties of the commission and office.--

(2) The commission may ~~has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ss. 494.001-494.0077. The commission may adopt rules requiring to allow electronic submission of any forms, documents, or fees required by this act if such rules reasonably accommodate technological or financial hardship. The commission may prescribe by rule requirements and procedures for obtaining an exemption due to a technological or financial hardship. The commission may also adopt rules to accept certification of compliance with requirements of this act in lieu of requiring submission of documents.

(6) The grant or denial of any license under this chapter must be in accordance with s. 120.60.

Section 3. Subsection (4) of section 494.0016, Florida Statutes, is amended to read:

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494.0016 Books, accounts, and records; maintenance;
examinations by the office.--

(4) The commission may prescribe by rule the minimum
information to be shown in the books, accounts, records, and
documents of licensees so that such records will enable the
office to determine the licensee's compliance with ss. 494.001-
494.0077. In addition, the commission may prescribe by rule
requirements for the destruction of books, accounts, records,
and documents retained by the licensee after completion of the
time period specified in subsection (3).

Section 4. Section 494.0029, Florida Statutes, is amended
to read:

494.0029 Mortgage business schools.--

(1)(a) Each person, school, or institution, except
accredited colleges, universities, community colleges, and
career centers in this state, which offers or conducts mortgage
business training for the purpose of meeting professional
continuing education requirements or as a condition precedent to
licensure as a mortgage broker, mortgage ~~or~~ lender, or a
correspondent mortgage lender must ~~shall~~ obtain a permit from
the office to operate as a mortgage business school before
offering or conducting mortgage business training and must abide
by the regulations imposed upon such person, school, or
institution by this chapter and rules adopted pursuant to this
chapter. The commission may require by rule that each applicant
for a mortgage business school permit provide any information
reasonably necessary to determine the applicant's eligibility.
Each person, school, or institution that applies for a permit

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under this section must do so on forms adopted by the commission
~~by rule The commission shall, by rule, recertify the permits~~
~~annually with initial and renewal permit fees that do not exceed~~
~~\$500 plus the cost of accreditation.~~

(b) An application is considered received for purposes of
s. 120.60 upon receipt of a completed application form as
prescribed by commission rule, a nonrefundable application fee
of \$500, the cost of accreditation as defined by commission
rule, and any other fee prescribed by law.

(c) A permit issued under this section is not transferable
or assignable.

(d) Each permitted mortgage business school shall report,
on a form prescribed by the commission, any change in the
information contained in the initial application form or any
amendment to such form not later than 30 days after the change
is effective.

(e) A permit issued under this section expires on
September 30th of each year. The office shall recertify a permit
annually upon submission of information the commission requires
by rule, together with a nonrefundable permit fee of \$500, and
the cost of accreditation as defined by commission rule, which
shall be for the annual period beginning October 1 of each year.

~~(2) All such schools shall maintain curriculum and~~
~~training materials necessary to determine the school's~~
~~compliance with this chapter and rules adopted pursuant to this~~
~~chapter. Any school that offers or conducts mortgage business~~
~~training shall at all times maintain an operation of training,~~
~~materials, and curriculum which is open to review by the office~~

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~~to determine compliance and competency as a mortgage business school.~~

(2)~~(3)~~(a) It is unlawful for any such person, school, or institution to offer or conduct mortgage business courses, regardless of the number of pupils, without first procuring a permit or to guarantee that the pupils will pass any mortgage business examination given on behalf of the office or to represent that the issuance of a permit is any recommendation or endorsement of the person, school, or institution to which it is issued or of any course of instruction given thereunder. Any person who violates this paragraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) The location of classes and the frequency of class meetings shall be in the discretion of the school offering the courses, if such courses conform to this chapter and related rules adopted by the commission.

(c) A mortgage business school may not use advertising of any nature which is false, inaccurate, misleading, or exaggerated. Publicity and advertising of a mortgage business school, or of its representative, shall be based upon relevant facts and supported by evidence establishing their truth.

(d) A representative of a mortgage business school subject to the provisions of this chapter may not promise or guarantee employment or placement of any pupil or prospective pupil, using information, training, or skill purported to be provided or otherwise enhanced by a course or school as inducement to enroll in the school, unless such person offers the pupil or

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prospective pupil a bona fide contract of employment.

(e) A school shall advertise only as a school and under the permitted name of such school as recognized by the office.

(f) Reference may not be made in any publication or communication medium as to a pass/fail ratio on mortgage business examinations by any school permitted by the office.

(3) Each person, school, or institution that is required to be permitted as a mortgage business school under this section shall maintain and make available for the office's review, inspection, and observation any training, curriculum, and training materials necessary for the office to determine compliance with this chapter and the rules adopted under this chapter. All documents prescribed by commission rule must be submitted with the initial application or recertification.

(4) Each person, school, or institution that is required to be permitted as a mortgage business school under this section must provide electronic notification to the office, in a manner prescribed by commission rule, of any pupils who have successfully completed the 24-hour prelicensure classroom instruction for mortgage brokers and principal representatives and any pupils who have completed the 14-hour professional continuing education for mortgage brokers.

Section 5. Section 494.00295, Florida Statutes, is amended to read:

494.00295 Professional continuing education.--

(1) Mortgage brokers, and the principal representatives and loan originators of a mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to s. 494.0065,

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393 | must successfully complete at least 14 hours of professional
 394 | continuing education covering primary and subordinate mortgage
 395 | financing transactions and the provisions of this chapter during
 396 | the 2-year period immediately preceding the renewal deadline for
 397 | a mortgage broker, mortgage lender, correspondent mortgage
 398 | lender, or mortgage lender pursuant to s. 494.0065. At the time
 399 | of license renewal, a licensee must certify to the office that
 400 | the professional continuing education requirements of this
 401 | section have been met. Licensees shall maintain records
 402 | documenting compliance with this subsection for a period of 4
 403 | years. The requirements for professional continuing education
 404 | are waived for the license renewal of a mortgage broker for the
 405 | biennial license period immediately following the period in
 406 | which the person became licensed as a mortgage broker. The
 407 | requirements for professional continuing education for a
 408 | principal representative are waived for the license renewal of a
 409 | mortgage lender, correspondent mortgage lender, or mortgage
 410 | lender pursuant to s. 494.0065 for the biennial license period
 411 | immediately following the period in which the principal
 412 | representative completed the 24 hours of classroom education and
 413 | passed a written test in order to qualify to be a principal
 414 | representative ~~Each mortgage broker, mortgage lender, and~~
 415 | ~~correspondent mortgage lender must certify to the office at the~~
 416 | ~~time of renewal that during the 2 years prior to an application~~
 417 | ~~for license renewal, all mortgage brokers and the principal~~
 418 | ~~representative, loan originators, and associates of a mortgage~~
 419 | ~~lender or correspondent mortgage lender have successfully~~
 420 | ~~completed at least 14 hours of professional education programs~~

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~~covering primary and subordinate mortgage financing transactions and the provisions of this chapter. Licensees shall maintain records documenting compliance with this subsection for a period of 4 years.~~

(2) Professional continuing education programs must contribute directly to the professional competency of the participants, may only be offered by permitted mortgage business schools or entities specifically exempted from permitting as mortgage business schools, and may include electronically transmitted or distance education courses.

(3) The commission shall adopt rules necessary to administer this section, including rules governing qualifying hours for professional continuing education programs and standards for electronically transmitted or distance education courses, including course completion requirements.

Section 6. Paragraphs (b) and (c) of subsection (1) and paragraph (e) of subsection (2) of section 494.003, Florida Statutes, are amended to read:

494.003 Exemptions.--

(1) None of the following persons is subject to the requirements of ss. 494.003-494.0043:

(b) A state or federal chartered bank, bank holding company, trust company, savings and loan association, savings bank or, credit union, bank holding company regulated under the laws of any state or the United States, or consumer finance company licensed pursuant to chapter 516.

(c) A wholly owned bank holding company subsidiary or a wholly owned savings and loan association holding company

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subsidary formed and regulated under the laws of any state or
the United States that is approved or certified by the
 Department of Housing and Urban Development, the Veterans
 Administration, the Government National Mortgage Association,
 the Federal National Mortgage Association, or the Federal Home
 Loan Mortgage Corporation.

(2) None of the following persons is required to be
 licensed under ss. 494.003-494.0043:

(e) A wholly owned subsidiary of a state or federal
chartered bank or savings and loan association the sole activity
 of which is to distribute the lending programs of such state or
federal chartered bank or savings and loan association to
 persons who arrange loans for, or make loans to, borrowers.

Section 7. Section 494.0031, Florida Statutes, is amended
 to read:

494.0031 Licensure as a mortgage brokerage business.--

(1) Each person who acts as a mortgage brokerage business
must be licensed under this section unless otherwise exempt from
licensure.

~~(2)~~~~(1)~~ Each initial application for a mortgage brokerage
business license must be in the form prescribed by rule of the
commission. The commission may require each applicant to provide
any information reasonably necessary to determine the
applicant's eligibility for licensure. The office shall issue a
 mortgage brokerage business license to each person who:

(a) Has submitted a completed application form and a
 nonrefundable application fee of \$425. An application is
considered received for purposes of s. 120.60 upon receipt of a

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477 completed application form as prescribed by commission rule, a
 478 nonrefundable application fee of \$425, and any other fee
 479 prescribed by law. ~~and~~

480 (b) Has a qualified principal broker pursuant to s.
 481 494.0035.

482 (c)(2) Has provided a complete set of fingerprints as the
 483 commission may require by rule for that each officer, director,
 484 control person, member, partner, or joint venturer of the
 485 applicant and each ultimate equitable owner of a 10-percent or
 486 greater interest in the mortgage brokerage business. A
 487 fingerprint card submitted to the office must be ~~submit a~~
 488 ~~complete set of fingerprints~~ taken by an authorized law
 489 enforcement agency officer. The office shall submit the
 490 fingerprints to the Department of Law Enforcement for state
 491 processing and the Department of Law Enforcement shall forward
 492 the fingerprints to the Federal Bureau of Investigation for
 493 federal processing. The cost of the fingerprint processing may
 494 be borne by the office, the employer, or the person subject to
 495 the background check. The Department of Law Enforcement shall
 496 submit an invoice to the office for the fingerprints received
 497 each month. The office shall screen the background results to
 498 determine if the applicant meets licensure requirements.

499 (d) Has provided information that the commission requires
 500 by rule concerning any designated principal mortgage broker; any
 501 officer, director, control person, member, partner, or joint
 502 venturer of the applicant; or any individual who is the ultimate
 503 equitable owner of a 10-percent or greater interest in the
 504 mortgage brokerage business. The commission may require

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information about any such applicant or person, including, but not limited to, his or her full name or other names by which he or she may have been known, age, social security number, qualifications, educational and business history, and disciplinary and criminal history.

(3) Notwithstanding ~~the provisions of~~ subsection (2) ~~(1)~~, it is a ground for denial of licensure if the applicant; designated principal mortgage broker; any officer, director, control person, member, partner, or joint venturer of the applicant; ~~any natural person owning a 10-percent or greater interest in the mortgage brokerage business~~; or any individual natural person who is the ultimate equitable owner of a 10-percent or greater interest in the mortgage brokerage business has committed any violation specified in ss. 494.001-494.0077 or has pending against him or her in any jurisdiction any criminal prosecution or administrative enforcement action that, ~~in any jurisdiction, which~~ involves fraud, dishonest dealing, or any other act of moral turpitude.

(4) A mortgage brokerage business or branch office license may be canceled if it was issued through mistake or inadvertence of the office. A notice of cancellation must be issued by the office within 90 days after the issuance of the license. A notice of cancellation is ~~shall be~~ effective upon receipt. The notice of cancellation must ~~shall~~ provide the applicant with notification of the right to request a hearing within 21 days after the applicant's receipt of the notice of cancellation. A license must ~~shall~~ be reinstated if the applicant can demonstrate that the requirements for obtaining the license

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under ~~pursuant to~~ this chapter have been satisfied.

~~(5) If an initial mortgage brokerage business or branch office license has been issued but the check upon which the license is based is returned due to insufficient funds, the license shall be deemed canceled. A license deemed canceled pursuant to this subsection shall be reinstated if the office receives a certified check for the appropriate amount within 30 days after the date the check was returned due to insufficient funds.~~

Section 8. Subsection (1) of section 494.0032, Florida Statutes, is amended to read:

494.0032 Renewal of mortgage brokerage business license or branch office license.--

(1) The office shall renew a mortgage brokerage business license upon receipt of a completed renewal form and payment of a nonrefundable renewal fee of \$375. Each licensee shall pay at the time of renewal a nonrefundable renewal fee of \$225 for the renewal of each branch office license. The license for a branch office must be renewed in conjunction with the renewal of the mortgage brokerage business license.

Section 9. Subsections (1), (2), and (7) of section 494.0033, Florida Statutes, are amended to read:

494.0033 Mortgage broker's license.--

(1) Each natural person who acts as a mortgage broker for a mortgage brokerage business or acts as an associate for a mortgage lender or correspondent mortgage lender must be licensed under ~~pursuant to~~ this section. To act as a mortgage broker, an individual must be an associate of a mortgage

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brokerage business, a mortgage lender, or a correspondent
mortgage lender. A mortgage broker may not be ~~is prohibited from~~
~~being~~ an associate of more than one mortgage brokerage business,
mortgage lender, or correspondent mortgage lender.

(2) Each initial application for a mortgage broker's
 license must be in the form prescribed by rule of the
 commission. The commission may require each applicant to provide
 any information reasonably necessary to make a determination of
 the applicant's eligibility for licensure. The office shall
 issue an initial license to any natural person who:

(a) Is at least 18 years of age.†

(b) Has passed a written test adopted and administered by
the office, or has passed an electronic test adopted and
administered by the office or a third party approved by the
office, which is designed to determine competency in primary and
subordinate mortgage financing transactions as well as to test
knowledge of ss. 494.001-494.0077 and the rules adopted pursuant
thereto. The commission may prescribe by rule an additional fee
that may not exceed \$100 for the electronic version of the
mortgage broker test. The commission may waive by rule the
examination requirement for any person who has passed a test
approved by the Conference of State Bank Supervisors, the
American Association of Residential Mortgage Regulators, or the
United States Department of Housing and Urban Development if the
test covers primary and subordinate mortgage financing
transactions.†

(c) Has submitted a completed application and a
 nonrefundable application fee of \$200. An application is

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considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of \$200, and any other fee prescribed by law. ~~The commission may set by rule an additional fee for a retake of the examination; and~~

(d) ~~Has filed a complete set of fingerprints, taken by an authorized law enforcement officer,~~ for submission by the office to the Department of Law Enforcement or the Federal Bureau of Investigation for processing. A fingerprint card submitted to the office must be taken by an authorized law enforcement agency. The office shall submit the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for federal processing. The cost of the fingerprint processing may be borne by the office, the employer, or the person subject to the background check. The Department of Law Enforcement shall submit an invoice to the office for the fingerprints received each month. The office shall screen the background results to determine if the applicant meets licensure requirements.

The commission may require by rule information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, qualifications and educational and business history, and disciplinary and criminal history.

~~(7) If an initial mortgage broker license has been issued~~

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~~but the check upon which the license is based is returned due to insufficient funds, the license shall be deemed canceled. A license deemed canceled pursuant to this subsection shall be reinstated if the office receives a certified check for the appropriate amount within 30 days after the date the check was returned due to insufficient funds.~~

Section 10. Subsections (2) and (3) of section 494.0036, Florida Statutes, are amended to read:

494.0036 Mortgage brokerage business branch offices.--

(2) The office shall issue a mortgage brokerage business branch office license to a mortgage brokerage business licensee after the office determines that the licensee has submitted upon receipt of a completed application for a branch office in a form as prescribed by commission rule and payment of an initial nonrefundable branch office license fee of \$225. ~~Branch office licenses must be renewed in conjunction with the renewal of the mortgage brokerage business license.~~ The branch office license shall be issued in the name of the mortgage brokerage business that maintains the branch office. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of \$225, and any other fee prescribed by law.

~~(3) Each branch office must prominently display the license issued for such branch office. Each person licensed as a mortgage broker must prominently display his or her license in the office where such person acts as a mortgage broker.~~

Section 11. Section 494.0039, Florida Statutes, is amended

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645 to read:

646 494.0039 Principal place of business requirements.--

647 ~~(1)~~ Each mortgage brokerage business licensee shall
648 maintain and transact business from a principal place of
649 business.

650 ~~(2) A licensee under ss. 494.003-494.0043 shall report any~~
651 ~~change of address of the principal place of business or any~~
652 ~~branch office within 15 days after the change.~~

653 ~~(3) Each mortgage brokerage business must prominently~~
654 ~~display its license at the principal place of business. Each~~
655 ~~licensed mortgage broker must prominently display his or her~~
656 ~~license in the office where such person acts as a mortgage~~
657 ~~broker.~~

658 Section 12. Section 494.004, Florida Statutes, is amended
659 to read:

660 494.004 Requirements of licensees.--

661 (1) Each licensee under ss. 494.003-494.0043 shall report,
662 in writing, any conviction of, or plea of nolo contendere to,
663 regardless of adjudication, any crime or administrative
664 violation that involves fraud, dishonest dealing, or any other
665 act of moral turpitude, in any jurisdiction, by the licensee or
666 any natural person named in s. 494.0031(2)(d)~~(3)~~, not later than
667 30 days after the date of conviction, entry of a plea of nolo
668 contendere, or final administrative action.

669 (2) Each licensee under ss. 494.003-494.0043 shall report,
670 in a form prescribed by rule of the commission, any conviction
671 of, or plea of nolo contendere to, regardless of whether
672 adjudication is withheld, any felony committed by the licensee

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or any natural person named in s. 494.0031(2)(d)~~(3)~~, not later than 30 days after the date of conviction or the date the plea of nolo contendere is entered.

(3) Each licensee under ss. 494.003-494.0043 shall report any action in bankruptcy, voluntary or involuntary, to the office not later than 7 business days after the action is instituted.

(4) Each licensee under ss. 494.003-494.0043 shall report on a form prescribed by rule of the commission any change to the information contained in any initial application form or any amendment to the application ~~any change in the form of business organization or any change of a person named, pursuant to s. 494.0031(3), to the office in writing~~ not later than 30 days after the change is effective.

(5) A license issued under ss. 494.003-494.0043 is not transferable or assignable.

(6) Each licensee under ss. 494.003-494.0043 shall report any change in the principal broker, partners, officers, members, joint venturers, directors, control persons of any licensee, or any individual who is the ultimate equitable owner of a 10-percent or greater interest in the licensee, or any change in the form of business organization, by written amendment in the form and at the time the commission specifies by rule.

(a) In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a licensee, such person or group shall submit an initial application for licensure as a mortgage brokerage business

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before such purchase or acquisition and at the time and in the
form the commission prescribes by rule.

(b) As used in this subsection, the term "controlling
interest" means possession of the power to direct or cause the
direction of the management or policies of a company whether
through ownership of securities, by contract, or otherwise. Any
person who directly or indirectly has the right to vote 25
percent or more of the voting securities of a company or is
entitled to 25 percent or more of the company's profits is
presumed to possess a controlling interest.

(c) Any addition of a partner, officer, member, joint
venturer, director, control person, or ultimate equitable owner
of the applicant who does not have a controlling interest and
who has not previously complied with the provisions of s.
494.0031(2)(c) and (d) is subject to such provisions unless
required to file an initial application in accordance with
paragraph (a). If the office finds that the licensee does not
continue to meet licensure requirements, the office may bring an
administrative action in accordance with s. 494.0041 to enforce
the provisions of this chapter.

(d) The commission shall adopt rules pursuant to ss.
120.536(1) and 120.54 providing for the waiver of the
application required by this subsection if the person or group
of persons proposing to purchase or acquire a controlling
interest in a licensee has previously complied with the
provisions of s. 494.0031(2)(c) and (d) with respect to the same
legal entity or is currently licensed by the office under this
chapter.

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729 (7)~~(6)~~ On or before April 30, 2000, each mortgage
730 brokerage business shall file an initial report stating the
731 name, social security number, date of birth, mortgage broker
732 license number, date of hire and, if applicable, date of
733 termination for each person who was an associate of the mortgage
734 brokerage business during the immediate preceding quarter.
735 Thereafter, a mortgage brokerage business shall file a quarterly
736 report only if a person became an associate or ceased to be an
737 associate of the mortgage brokerage business during the
738 immediate preceding quarter. Such report shall be filed within
739 30 days after the last day of each calendar quarter and shall
740 contain the name, social security number, date of birth,
741 mortgage broker license number, date of hire and, if applicable,
742 the date of termination of each person who became or ceased to
743 be an associate of the mortgage brokerage business during the
744 immediate preceding quarter. The commission shall prescribe, by
745 rule, the procedures for filing reports required by this
746 subsection.

747 Section 13. Paragraphs (s), (t), and (u) are added to
748 subsection (2) of section 494.0041, Florida Statutes, and
749 subsection (3) of that section is amended, to read:

750 494.0041 Administrative penalties and fines; license
751 violations.--

752 (2) Each of the following acts constitutes a ground for
753 which the disciplinary actions specified in subsection (1) may
754 be taken:

755 (s) Payment to the office for a license or permit with a
756 check or electronic transmission of funds that is dishonored by

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the applicant's or licensee's financial institution.

(t) Having a final judgment entered against the applicant or licensee in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit.

(u)1. Having been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, state or federal agency, national securities exchange, national commodities exchange, national option exchange, national securities association, national commodities association, or national option association involving a violation of any federal or state securities or commodities law or rule or regulation adopted under such law or involving a violation of any rule or regulation of any national securities, commodities, or options exchange or association.

2. Having been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers or lenders, money transmitters, or other related or similar industries.

(3) A mortgage brokerage business is subject to the disciplinary actions specified in subsection (1) for a violation of subsection (2) by any officer, member, director, control person, joint venturer, partner, ultimate equitable owner of a 10-percent or greater interest in the mortgage brokerage business, or associate mortgage broker of the licensee.

Section 14. Paragraphs (a) and (c) of subsection (1) and paragraph (a) of subsection (2) of section 494.006, Florida

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785 Statutes, are amended to read:

786 494.006 Exemptions.--

787 (1) None of the following persons are subject to the
788 requirements of ss. 494.006-494.0077 in order to act as a
789 mortgage lender or correspondent mortgage lender:

790 (a) A state or federal chartered bank, ~~bank holding~~
791 ~~company~~, trust company, savings and loan association, savings
792 bank ~~or~~, credit union, bank holding company regulated under the
793 laws of any state or the United States, or insurance company if
794 the insurance company is duly licensed in this state.

795 (c) A wholly owned bank holding company subsidiary or a
796 wholly owned savings and loan association holding company
797 subsidiary that is formed and regulated under the laws of any
798 state or the United States and that is approved or certified by
799 the Department of Housing and Urban Development, the Veterans
800 Administration, the Government National Mortgage Association,
801 the Federal National Mortgage Association, or the Federal Home
802 Loan Mortgage Corporation.

803 (2)(a) A natural person employed by a mortgage lender or
804 correspondent mortgage lender licensed under ss. 494.001-
805 494.0077 is exempt from the licensure requirements of ss.
806 494.001-494.0077 when acting within the scope of employment with
807 the licensee.

808 Section 15. Section 494.0061, Florida Statutes, is amended
809 to read:

810 494.0061 Mortgage lender's license requirements.--

811 (1) Each person who acts as a mortgage lender must be
812 licensed under this section unless otherwise exempt from

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813 licensure.

814 (2)(1) Each initial application for a mortgage lender
815 license must be in the form prescribed by rule of the
816 commission. The commission or office may require each applicant
817 for a mortgage lender license to provide any information
818 reasonably necessary to make a determination of the applicant's
819 eligibility for licensure. The office shall issue an initial
820 mortgage lender license to any person that submits:

821 (a) A completed application form.+

822 (b) A nonrefundable application fee of \$575. An
823 application is considered received for purposes of s. 120.60
824 upon receipt of a completed application form as prescribed by
825 commission rule, a nonrefundable application fee of \$575, and
826 any other fee prescribed by law.+

827 (c) Audited financial statements, which documents disclose
828 that the applicant has a bona fide and verifiable net worth,
829 pursuant to United States generally accepted accounting
830 principles, of at least \$250,000, which must be continuously
831 maintained as a condition of licensure.+

832 (d) A surety bond in the amount of \$10,000, payable to the
833 state and conditioned upon compliance with ss. 494.001-494.0077,
834 which inures to the office and which must be continuously
835 maintained thereafter in full force.+

836 (e) Documentation that the applicant is duly incorporated,
837 registered, or otherwise formed as a general partnership,
838 limited partnership, limited liability company, or other lawful
839 entity under the laws of this state or another state of the
840 United States.+~~and~~

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841 (f) ~~For applications submitted after October 1, 2001,~~
 842 Proof that the applicant's principal representative has
 843 completed 24 hours of classroom instruction in primary and
 844 subordinate financing transactions and in the provisions of this
 845 chapter and rules adopted under this chapter. This requirement
 846 is satisfied if the principal representative has continuously
 847 served in the capacity of a principal representative for a
 848 licensed entity under this chapter for at least 1 year and has
 849 not had a lapse in designation as a principal representative of
 850 more than 2 years before the date of the submission of the
 851 application or amendment in the case of a change in the
 852 principal representative. This requirement is also satisfied if
 853 the principal representative currently holds an active license
 854 as a mortgage broker in this state.

855 (g) A complete set of fingerprints as the commission
 856 requires by rule for the designated principal representative and
 857 each officer, director, control person, member, partner, or
 858 joint venturer of the applicant and ultimate equitable owner of
 859 a 10-percent or greater interest in the applicant. A fingerprint
 860 card submitted to the office must be taken by an authorized law
 861 enforcement agency. The office shall submit the fingerprints to
 862 the Department of Law Enforcement for state processing and the
 863 Department of Law Enforcement shall forward the fingerprints to
 864 the Federal Bureau of Investigation for federal processing. The
 865 cost for the fingerprint processing may be borne by the office,
 866 the employer, or the person subject to the background check. The
 867 Department of Law Enforcement shall submit an invoice to the
 868 office for the fingerprints received each month. The office

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shall screen the background results to determine if the applicant meets licensure requirements.

(h) Information the commission requires by rule concerning any designated principal representative; any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions; or any natural person who is the ultimate equitable owner of a 10-percent or greater interest in the mortgage lender. The commission may require information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, social security number, age, qualifications and educational and business history, and disciplinary and criminal history.

~~(3)(2)~~ Notwithstanding the ~~provisions of~~ subsection ~~(2)~~ ~~(1)~~, it is a ground for denial of licensure if the applicant; designated principal representative; any principal officer, or director, control person, member, partner, or joint venturer of the applicant; ~~or~~ any natural person owning a 10-percent or greater interest in the applicant; ~~or~~ any natural person who is the ultimate equitable owner of a 10-percent or greater interest in the applicant has committed any violation specified in s. 494.0072, or has pending against her or him any criminal prosecution or administrative enforcement action, in any jurisdiction, which involves fraud, dishonest dealing, or any act of moral turpitude.

~~(3) Each initial application for a mortgage lender's license must be in a form prescribed by the commission. The~~

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~~commission or office may require each applicant to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The commission or office may require that each officer, director, and ultimate equitable owner of a 10 percent or greater interest in the applicant submit a complete set of fingerprints taken by an authorized law enforcement officer.~~

(4) A person required to be licensed under ss. 494.006-494.0077, or an agent or employee thereof, is deemed to have consented to the venue of courts of competent jurisdiction in this state regarding any matter within the authority of ss. 494.001-494.0077 regardless of where an act or violation was committed.

(5) A license issued in accordance with ss. 494.006-494.0077 is not transferable or assignable.

(6) A mortgage lender or branch office license may be canceled if it was issued through mistake or inadvertence of the office. A notice of cancellation must be issued by the office within 90 days after the issuance of the license. A notice of cancellation shall be effective upon receipt. The notice of cancellation shall provide the applicant with notification of the right to request a hearing within 21 days after the applicant's receipt of the notice of cancellation. A license shall be reinstated if the applicant can demonstrate that the requirements for obtaining the license under ~~pursuant to~~ this chapter have been satisfied.

~~(7) If an initial mortgage lender or branch office license has been issued but the check upon which the license is based is~~

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~~returned due to insufficient funds, the license shall be deemed
canceled. A license deemed canceled pursuant to this subsection
shall be reinstated if the office receives a certified check for
the appropriate amount within 30 days after the date the check
was returned due to insufficient funds.~~

~~(7)(8)~~ Each lender, regardless of the number of branches
it operates, shall designate a principal representative who
exercises control of the licensee's business and shall maintain
a form prescribed by the commission designating the principal
representative. If the form is not accurately maintained, the
business is considered to be operated by each officer, director,
or equitable owner of a 10-percent or greater interest in the
business.

~~(8)(9)~~ After October 1, 2001, An applicant's principal
representative must pass a written test prescribed by the
commission and administered by the office, or must pass an
electronic test prescribed by the commission and administered by
the office or a third party approved by the office, which covers
primary and subordinate mortgage financing transactions and the
provisions of this chapter and rules adopted under this chapter.
The commission may set a fee by rule, which may not exceed \$100,
for the electronic version of the mortgage broker test. The
commission may waive by rule the examination requirement for any
person who has passed a test approved by the Conference of State
Bank Supervisors, the American Association of Residential
Mortgage Regulators, or the United States Department of Housing
and Urban Development if the test covers primary and subordinate
mortgage financing transactions. This requirement is satisfied

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if the principal representative has continuously served in the
capacity of a principal representative for a licensed entity
under this chapter for at least 1 year and has not had a lapse
in designation as a principal representative of more than 2
years before the date of the submission of the application or
amendment in the case of a change in the principal
representative. This requirement is also satisfied if the
principal representative holds an active license as a mortgage
broker in this state.

~~(9)(10)~~ A lender shall notify the office of any change in
the designation of its principal representative within 30 days
after the change is effective. A new principal representative
shall satisfy the name and address of any new principal
representative and shall document that the person has completed
the educational and testing requirements of this section within
90 days after being designated as ~~upon the designation of a new~~
principal representative. This requirement is satisfied if the
principal representative has continuously served in the capacity
of a principal representative for a licensed entity under this
chapter for at least 1 year and has not had a lapse in
designation as a principal representative of more than 2 years
before the date of the submission of the application or
amendment in the case of a change in the principal
representative. This requirement is also satisfied if the
principal representative holds an active license as a mortgage
broker in this state.

Section 16. Section 494.0062, Florida Statutes, is amended
to read:

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494.0062 Correspondent mortgage lender's license requirements.--

(1) Each person who acts as a correspondent mortgage lender must be licensed under this section unless otherwise exempt from licensure.

(2)(1) Each initial application for a correspondent mortgage lender's license must be in the form prescribed by rule of the commission. The office may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The office shall issue an initial correspondent mortgage lender license to any person who submits:

(a) A completed application form.+

(b) A nonrefundable application fee of \$500. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of \$500, and any other fee prescribed by law.+

(c) Audited financial statements that,~~which~~ document that the applicant application has a bona fide and verifiable net worth pursuant to United States generally accepted accounting principles of \$25,000 or more, which must be continuously maintained as a condition of licensure.+

(d) A surety bond in the amount of \$10,000, payable to the State of Florida and conditioned upon compliance with ss. 494.001-494.0077, which inures to the office and which must be continuously maintained, thereafter, in full force.+

(e) Documentation that the applicant is duly incorporated,

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1009 registered, or otherwise formed as a general partnership,
1010 limited partnership, limited liability company, or other lawful
1011 entity under the laws of this state or another state of the
1012 United States. ~~and~~

1013 (f) ~~For applications filed after October 1, 2001,~~ Proof
1014 that the applicant's principal representative has completed 24
1015 hours of classroom instruction in primary and subordinate
1016 financing transactions and in the provisions of this chapter and
1017 rules enacted under this chapter. This requirement is satisfied
1018 if the principal representative has continuously served in the
1019 capacity of a principal representative for a licensed entity
1020 under this chapter for at least 1 year and has not had a lapse
1021 in designation as a principal representative of more than 2
1022 years before the date of the submission of the application or
1023 amendment in the case of a change in the principal
1024 representative. This requirement is also satisfied if the
1025 principal representative holds an active license as a mortgage
1026 broker in this state.

1027 (g) A complete set of fingerprints as the commission
1028 requires by rule for the designated principal representative and
1029 each officer, director, control person, member, partner, or
1030 joint venturer of the applicant and ultimate equitable owner of
1031 a 10-percent or greater interest in the applicant. A fingerprint
1032 card submitted to the office must be taken by an authorized law
1033 enforcement agency. The office shall submit the fingerprints to
1034 the Department of Law Enforcement for state processing and the
1035 Department of Law Enforcement shall forward the fingerprints to
1036 the Federal Bureau of Investigation for federal processing. The

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cost of the fingerprint processing may be borne by the office,
the employer, or the person subject to the background check. The
Department of Law Enforcement shall submit an invoice to the
office for the fingerprints received each month. The office
shall screen the background results to determine if the
applicant meets licensure requirements.

(h) Information the commission requires by rule concerning
any designated principal representative; any officer, director,
control person, member, partner, or joint venturer of the
applicant or any person having the same or substantially similar
status or performing substantially similar functions; or any
natural person who is the ultimate equitable owner of a 10-
percent or greater interest in the correspondent mortgage
lender. The office may require information concerning any such
applicant or person, including, but not limited to, his or her
full name and any other names by which he or she may have been
known, age, social security number, qualifications and
educational and business history, and disciplinary and criminal
history.

(3)(2) Notwithstanding the provisions of subsection (2)
(1), it is a ground for denial of licensure if the applicant;
any designated principal representative; any principal officer,
or director, control person, member, partner, or joint venturer
of the applicant; or any natural person who is the ultimate
equitable owner of a 10-percent or greater interest in the
applicant has committed any violation specified in s. 494.0072,
or has pending against her or him any criminal prosecution or
administrative enforcement action, in any jurisdiction, which

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involves fraud, dishonest dealing, or any act of moral turpitude.

~~(3) Each initial application for a correspondent mortgage lender's license must be in a form prescribed by the commission. The commission or office may require each applicant to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The commission or office may require that each officer, director, and ultimate equitable owner of a 10 percent or greater interest submit a complete set of fingerprints taken by an authorized law enforcement officer.~~

(4) Each license is valid for the remainder of the biennium in which the license is issued.

(5) A person licensed as a correspondent mortgage lender may make mortgage loans, but may not service a mortgage loan for more than 4 months after the date the mortgage loan was made or acquired by the correspondent mortgage lender.

(6) A licensee under ss. 494.006-494.0077, or an agent or employee thereof, is deemed to have consented to the venue of courts of competent jurisdiction in this state regarding any matter within the authority of ss. 494.001-494.0077 regardless of where an act or violation was committed.

(7) A correspondent mortgage lender is subject to the same requirements and restrictions as a licensed mortgage lender unless otherwise provided in this section.

(8) A license issued under this section is not transferable or assignable.

(9) A correspondent mortgage lender or branch office

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1093 | license may be canceled if it was issued through mistake or
1094 | inadvertence of the office. A notice of cancellation must be
1095 | issued by the office within 90 days after the issuance of the
1096 | license. A notice of cancellation shall be effective upon
1097 | receipt. The notice of cancellation shall provide the applicant
1098 | with notification of the right to request a hearing within 21
1099 | days after the applicant's receipt of the notice of
1100 | cancellation. A license shall be reinstated if the applicant can
1101 | demonstrate that the requirements for obtaining the license
1102 | pursuant to this chapter have been satisfied.

1103 | ~~(10) If an initial correspondent mortgage lender or branch~~
1104 | ~~office license has been issued but the check upon which the~~
1105 | ~~license is based is returned due to insufficient funds, the~~
1106 | ~~license shall be deemed canceled. A license deemed canceled~~
1107 | ~~pursuant to this subsection shall be reinstated if the office~~
1108 | ~~receives a certified check for the appropriate amount within 30~~
1109 | ~~days after the date the check was returned due to insufficient~~
1110 | ~~funds.~~

1111 | (10)~~(11)~~ Each correspondent lender shall designate a
1112 | principal representative who exercises control over the business
1113 | and shall maintain a form prescribed by the commission
1114 | designating the principal representative. If the form is not
1115 | accurately maintained, the business is considered to be operated
1116 | by each officer, director, or equitable owner of a 10-percent or
1117 | greater interest in the business.

1118 | (11)~~(12)~~ After October 1, 2001, An applicant's principal
1119 | representative must pass a written test prescribed by the
1120 | commission and administered by the office, or must pass an

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1121 electronic test prescribed by the commission and administered by
 1122 the office or a third party approved by the office, which covers
 1123 primary and subordinate mortgage financing transactions and the
 1124 provisions of this chapter and rules adopted under this chapter.
 1125 The commission may waive by rule the examination requirement for
 1126 any person who has passed a test approved by the Conference of
 1127 State Bank Supervisors, the American Association of Residential
 1128 Mortgage Regulators, or the United States Department of Housing
 1129 and Urban Development if the test covers primary and subordinate
 1130 mortgage financing transactions. The commission may set by rule
 1131 a fee not to exceed \$100 for taking the examination. This
 1132 requirement is satisfied if the principal representative has
 1133 continuously served in the capacity of a principal
 1134 representative for a licensed entity under this chapter for at
 1135 least 1 year and has not had a lapse in designation as a
 1136 principal representative of more than 2 years before the date of
 1137 the submission of the application or amendment in the case of a
 1138 change in the principal representative. This requirement is also
 1139 satisfied if the principal representative holds an active
 1140 license as a mortgage broker in this state.

1141 (12)-(13) A correspondent lender shall notify the office of
 1142 any change in the designation of its principal representative
 1143 within 30 days after the change is effective. A new principal
 1144 representative shall satisfy the name and address of any new
 1145 principal representative and shall document that such person has
 1146 completed the educational and testing requirements of this
 1147 section within 90 days after being designated as upon the
 1148 lender's designation of a new principal representative. This

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1149 requirement is satisfied if the principal representative has
 1150 continuously served in the capacity of a principal
 1151 representative for a licensed entity under this chapter for at
 1152 least 1 year and has not had a lapse in designation as a
 1153 principal representative of more than 2 years before the date of
 1154 the submission of the application or amendment in the case of a
 1155 change in the principal representative. This requirement is also
 1156 satisfied if the principal representative holds an active
 1157 license as a mortgage broker in this state.

1158 Section 17. Paragraph (b) of subsection (1) and subsection
 1159 (2) of section 494.0064, Florida Statutes, are amended to read:
 1160 494.0064 Renewal of mortgage lender's license; branch
 1161 office license renewal.--

1162 (1)

1163 (b) A licensee shall also submit, as part of the renewal
 1164 form, certification that during the preceding 2 years the
 1165 licensee's principal representative and ~~loan originators, and~~
 1166 ~~associates~~ have completed the professional continuing education
 1167 requirements of s. 494.00295.

1168 (2) The commission shall adopt rules establishing a
 1169 procedure for the biennial renewal of mortgage lender's
 1170 licenses, correspondent lender's licenses, and branch office
 1171 licenses ~~permits~~. The commission may prescribe the form for
 1172 renewal and may require an update of all information provided in
 1173 the licensee's initial application.

1174 Section 18. Section 494.0065, Florida Statutes, is amended
 1175 to read:

1176 494.0065 Saving clause.--

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1177 (1)(a) Any person in good standing who holds an active
1178 registration pursuant to former s. 494.039 or license pursuant
1179 to former s. 521.205, or any person who acted solely as a
1180 mortgage servicer on September 30, 1991, is eligible to apply to
1181 the office for a mortgage lender's license and is eligible for
1182 licensure if the applicant:

1183 1. For at least 12 months during the period of October 1,
1184 1989, through September 30, 1991, has engaged in the business of
1185 either acting as a seller or assignor of mortgage loans or as a
1186 servicer of mortgage loans, or both;

1187 2. Has documented a minimum net worth of \$25,000 in
1188 audited financial statements; and

1189 3. Has applied for licensure pursuant to this section by
1190 January 1, 1992, and paid an application fee of \$100.

1191 (b) A licensee pursuant to paragraph (a) may operate a
1192 wholly owned subsidiary or affiliate for the purpose of
1193 servicing accounts if the subsidiary or affiliate is operational
1194 as of September 30, 1991. Such subsidiary or affiliate is not
1195 required to obtain a separate license, but is subject to all the
1196 requirements of a licensee under ss. 494.006-494.0077.

1197 (2) A licensee issued a license pursuant to subsection (1)
1198 may renew its mortgage lending license if it documents a minimum
1199 net worth of \$25,000, according to United States generally
1200 accepted accounting principles, which must be continuously
1201 maintained as a condition to licensure. The office shall require
1202 an audited financial statement which documents such net worth.

1203 (3) The commission may prescribe by rule forms and
1204 procedures for application for licensure, and amendment and

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1205 withdrawal of application for licensure, or transfer, including
 1206 any existing branch offices, in accordance with subsections (4)
 1207 and (5), and for renewal of licensure of licensees under this
 1208 section. The office may require each applicant to provide any
 1209 information reasonably necessary to determine the applicant's
 1210 eligibility for licensure. An application is considered received
 1211 for purposes of s. 120.60 upon receipt of a completed
 1212 application form as prescribed by commission rule, a
 1213 nonrefundable application fee of \$500, and any other fee
 1214 prescribed by law.

1215 (4)(a) Notwithstanding ss. 494.0061(5) and 494.0067~~(2)~~~~(3)~~,
 1216 the ultimate equitable owner, as of the effective date of this
 1217 act, of a mortgage lender licensed under this section may
 1218 transfer, one time, at least 50 percent of the ownership,
 1219 control, or power to vote any class of equity securities of such
 1220 mortgage lender, except as provided in paragraph (b). For
 1221 purposes of this subsection, satisfaction of the amount of the
 1222 ownership transferred may be met in multiple transactions or in
 1223 a single transaction.

1224 (b) A person who is an ultimate equitable owner on the
 1225 effective date of this act may transfer, at any time, at least
 1226 50 percent of the ownership, control, or power to vote any class
 1227 of equity securities of such person to the person's spouse or
 1228 child, and any such transferee may transfer, at any time, such
 1229 ownership, control, or power to vote to a spouse or child of
 1230 such transferee, in perpetuity.

1231 (c) For any transfer application filed on or after October
 1232 1, 2006:

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1233 1. An applicant must provide proof that the applicant's
 1234 principal representative has completed 24 hours of instruction
 1235 in primary and subordinate financing transactions and in the
 1236 provisions of this chapter and rules adopted under this chapter.
 1237 This requirement is satisfied if the principal representative
 1238 has continuously served in the capacity of a principal
 1239 representative for a licensed entity under this chapter for at
 1240 least 1 year and has not had a lapse in designation as a
 1241 principal representative of more than 2 years before the date of
 1242 the submission of the application or amendment in the case of a
 1243 change in the principal representative. This requirement is also
 1244 satisfied if the principal representative holds an active
 1245 license as a mortgage broker in this state.

1246 2. An applicant's principal representative must pass a
 1247 written test prescribed by the commission and administered by
 1248 the office, or must pass an electronic test prescribed by the
 1249 commission and administered by the office or a third party
 1250 approved by the office, which covers primary and subordinate
 1251 mortgage financing transactions and the provisions of this
 1252 chapter and rules adopted under this chapter. The commission may
 1253 set by rule a fee not to exceed \$100 for the electronic version
 1254 of the mortgage broker test. The commission may waive by rule
 1255 the examination requirement for any person who has passed a test
 1256 approved by the Conference of State Bank Supervisors, the
 1257 American Association of Residential Mortgage Regulators, or the
 1258 United States Department of Housing and Urban Development if the
 1259 test covers primary and subordinate mortgage financing
 1260 transactions. This requirement is satisfied if the principal

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representative has continuously served in the capacity of a principal representative for a licensed entity under this chapter for at least 1 year and has not had a lapse in designation as a principal representative of more than 2 years before the date of the submission of the application or amendment in the case of a change in the principal representative. This requirement is also satisfied if the principal representative holds an active license as a mortgage broker in this state.

(5) Each initial application for a transfer must be in the form prescribed by rule of the commission. The commission or office may require each applicant for any transfer to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The office shall issue the transfer of licensure to any person who submits the following documentation at least 90 days prior to the anticipated transfer:

(a) A completed application form.

(b) A nonrefundable fee set by rule of the commission in the amount of \$500. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of \$500, and any other fee prescribed by law.

(c) Audited financial statements that substantiate that the applicant has a bona fide and verifiable net worth, according to United States generally accepted accounting principles, of at least \$25,000, which must be continuously maintained as a condition of licensure.

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(d) Documentation that the applicant is incorporated, registered, or otherwise formed as a general partnership, limited partnership, limited liability company, or other lawful entity under the laws of this state or another state of the United States.

(e) A complete set of fingerprints as the commission requires by rule for ~~or office may require that~~ each designated principal representative, officer, director, control person, member, partner, or joint venturer of the applicant and the ultimate equitable owner of a 10-percent or greater interest in the applicant. A fingerprint card submitted to the office must ~~be submit a complete set of fingerprints~~ taken by an authorized law enforcement agency officer. The office shall submit the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for federal processing. The cost of the fingerprint processing may be borne by the office, the employer, or the person subject to the background check. The Department of Law Enforcement shall submit an invoice to the office for the fingerprints received each month. The office shall screen the background results to determine if the applicant meets licensure requirements.

(f) Information that the commission requires by rule concerning any designated principal representative; any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions; or any individual who is the ultimate equitable owner of a 10-

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percent or greater interest in the mortgage lender. The
commission may require information concerning such applicant or
person, including, but not limited to, his or her full name and
any other names by which he or she may have been known, age,
social security number, qualifications and educational and
business history, and disciplinary and criminal history.

(6) Notwithstanding subsection (5), a transfer under
 subsection (4) may be denied if the applicant; designated
principal representative; ~~any principal officer, or director,~~
control person, member, partner, or joint venturer of the
 applicant; ~~or any natural person owning a 10-percent or greater~~
 interest in the applicant has committed any violation specified
 in s. 494.0072, or has entered a plea of nolo contendere,
 regardless of adjudication, or has an action pending against the
 applicant in any criminal prosecution or administrative
 enforcement action, in any jurisdiction, which involves fraud,
 dishonest dealing, or any act of moral turpitude.

(7) A license issued in accordance with this section is
 not transferable or assignable except as provided in subsection
 (4).

(8) Each person applying for a transfer of any branch
 office pursuant to subsection (4) must comply with the
 requirements of s. 494.0066.

(9) Each mortgage lender shall designate a principal
representative who exercises control over the business and shall
keep the designation current on a form prescribed by commission
rule designating the principal representative. If the
information on the form is not kept current, the business is

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considered to be operated by each officer, director, or
equitable owner of a 10-percent or greater interest in the
business.

(10) A lender shall notify the office of any change in the
designation of its principal representative within 30 days after
the change is effective. A new principal representative must
satisfy the educational and testing requirements of this section
within 90 days after being designated as the new principal
representative. This requirement is satisfied if the principal
representative has continuously served in the capacity of a
principal representative for a licensed entity under this
chapter for at least 1 year and has not had a lapse in
designation as a principal representative of more than 2 years
before the date of the submission of the application or
amendment in the case of a change in the principal
representative. This requirement is also satisfied if the
principal representative currently holds an active license as a
mortgage broker in this state.

Section 19. Subsection (2) of section 494.0066, Florida
Statutes, is amended to read:

494.0066 Branch offices.--

(2) The office shall issue a branch office license to a
licensee licensed under ss. 494.006-494.0077 after the office
determines that the licensee has submitted ~~upon receipt of a~~
completed branch office application form as prescribed by rule
by the commission and an initial nonrefundable branch office
license fee of \$325. The branch office application must include
the name and license number of the licensee under ss. 494.006-

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1373 494.0077, the name of the licensee's employee in charge of the
1374 branch office, and the address of the branch office. The branch
1375 office license shall be issued in the name of the licensee under
1376 ss. 494.006-494.0077 and must be renewed in conjunction with the
1377 license renewal.

1378 Section 20. Section 494.0067, Florida Statutes, is amended
1379 to read:

1380 494.0067 Requirements of licensees under ss. 494.006-
1381 494.0077.--

1382 ~~(1) Each license of a mortgage lender, correspondent~~
1383 ~~mortgage lender, or branch office shall be prominently displayed~~
1384 ~~in the office for which it is issued.~~

1385 (1)(2) Each licensee under ss. 494.006-494.0077 which
1386 makes mortgage loans on real estate in this state shall transact
1387 business from a principal place of business. Each principal
1388 place of business and each branch office shall be operated under
1389 the full charge, control, and supervision of the licensee under
1390 ss. 494.006-494.0077.

1391 (2)(3) A license issued under ss. 494.006-494.0077 is not
1392 transferable or assignable.

1393 (3) Each licensee under ss. 494.006-494.0077 shall report,
1394 on a form prescribed by rule of the commission, any change in
1395 the information contained in any initial application form, or
1396 any amendment thereto, not later than 30 days after the change
1397 is effective.

1398 (4) Each licensee under ss. 494.006-494.0077 shall report
1399 any changes in the partners, officers, members, joint venturers,
1400 directors, or control persons of any licensee or changes in the

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1401 form of business organization by written amendment in such form
1402 and at such time that the commission specifies by rule.

1403 (a) In any case in which a person or a group of persons,
1404 directly or indirectly or acting by or through one or more
1405 persons, proposes to purchase or acquire a controlling interest
1406 in a licensee, such person or group must submit an initial
1407 application for licensure as a mortgage lender or correspondent
1408 mortgage lender before such purchase or acquisition and at the
1409 time and in the form prescribed by the commission by rule.

1410 (b) As used in this subsection, the term "controlling
1411 interest" means possession of the power to direct or cause the
1412 direction of the management or policies of a company whether
1413 through ownership of securities, by contract, or otherwise. Any
1414 person who directly or indirectly has the right to vote 25
1415 percent or more of the voting securities of a company or who is
1416 entitled to 25 percent or more of the company's profits is
1417 presumed to possess a controlling interest.

1418 (c) Any addition of a designated principal representative,
1419 partner, officer, member, joint venturer, director, or control
1420 person of the applicant who does not have a controlling interest
1421 and who has not previously complied with the provisions of s.
1422 494.0061(2)(g) and (h), s. 494.0062(2)(g) and (h), or s.
1423 494.0065(5)(e) and (f) shall be subject to such provisions
1424 unless required to file an initial application in accordance
1425 with paragraph (a). If the office determines that the licensee
1426 does not continue to meet licensure requirements, the office may
1427 bring administrative action in accordance with s. 494.0072 to
1428 enforce the provisions of this section.

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1429 (d) The commission shall adopt rules pursuant to ss.
 1430 120.536(1) and 120.54 providing for the waiver of the
 1431 application required by this subsection if the person or group
 1432 of persons proposing to purchase or acquire a controlling
 1433 interest in a licensee has previously complied with the
 1434 provisions of s. 494.0061(2)(g) and (h), s. 494.0062(2)(g) and
 1435 (h), or s. 494.0065(5)(e) and (f) with the same legal entity or
 1436 is currently licensed with the office under this chapter.

1437 ~~(4) The commission or office may require each licensee~~
 1438 ~~under ss. 494.006-494.0077 to report any change of address of~~
 1439 ~~the principal place of business, change of address of any branch~~
 1440 ~~office, or change of principal officer, director, or ultimate~~
 1441 ~~equitable owner of 10 percent or more of the licensed~~
 1442 ~~corporation to the office in a form prescribed by rule of the~~
 1443 ~~commission not later than 30 business days after the change is~~
 1444 ~~effective.~~

1445 (5) Each licensee under ss. 494.006-494.0077 shall report
 1446 in a form prescribed by rule by the commission any indictment,
 1447 information, charge, conviction, plea of nolo contendere, or
 1448 plea of guilty to any crime or administrative violation that
 1449 involves fraud, dishonest dealing, or any other act of moral
 1450 turpitude, in any jurisdiction, by the licensee under ss.
 1451 494.006-494.0077 or any principal officer, director, or ultimate
 1452 equitable owner of 10 percent or more of the licensed
 1453 corporation, not later than 30 business days after the
 1454 indictment, information, charge, conviction, or final
 1455 administrative action.

1456 (6) Each licensee under ss. 494.006-494.0077 shall report

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1457 any action in bankruptcy, voluntary or involuntary, to the
1458 office, not later than 7 business days after the action is
1459 instituted.

1460 (7) Each licensee under ss. 494.006-494.0077 shall
1461 designate a registered agent in this state for service of
1462 process.

1463 (8) Each licensee under ss. 494.006-494.0077 shall provide
1464 an applicant for a mortgage loan a good faith estimate of the
1465 costs the applicant can reasonably expect to pay in obtaining a
1466 mortgage loan. The good faith estimate of costs shall be mailed
1467 or delivered to the applicant within a reasonable time after the
1468 licensee receives a written loan application from the applicant.
1469 The estimate of costs may be provided to the applicant by a
1470 person other than the licensee making the loan. The commission
1471 may adopt rules that set forth the disclosure requirements of
1472 this section.

1473 (9) On or before April 30, 2000, each mortgage lender or
1474 correspondent mortgage lender shall file an initial report
1475 stating the full legal name, residential address, social
1476 security number, date of birth, mortgage broker license number,
1477 date of hire, and, if applicable, date of termination for each
1478 person who acted as a loan originator or an associate of the
1479 mortgage lender or correspondent mortgage lender during the
1480 immediate preceding quarter. Thereafter, a mortgage lender or
1481 correspondent mortgage lender shall file a report only if a
1482 person became or ceased to be a loan originator or an associate
1483 of the mortgage lender or correspondent mortgage lender during
1484 the immediate preceding quarter. Such report shall be filed

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1485 within 30 days after the last day of each calendar quarter and
 1486 shall contain the full legal name, residential address, social
 1487 security number, date of birth, date of hire and, if applicable,
 1488 the mortgage broker license number and date of termination of
 1489 each person who became or ceased to be a loan originator or an
 1490 associate of the mortgage lender or correspondent mortgage
 1491 lender during the immediate preceding quarter. The commission
 1492 shall prescribe, by rule, the procedures for filing reports
 1493 required by this subsection.

1494 (10) (a) Each licensee shall require the principal
 1495 representative and all loan originators ~~or associates~~ who
 1496 perform services for the licensee to complete 14 hours of
 1497 professional continuing education during each biennial license
 1498 period. The education shall cover primary and subordinate
 1499 mortgage financing transactions and the provisions of this
 1500 chapter and the rules adopted under this chapter.

1501 (b) The licensee shall maintain records of such training
 1502 for a period of 4 years, including records of the content of and
 1503 hours designated for each program and the date and location of
 1504 the program.

1505 (c) Evidence of completion of such programs shall be
 1506 included with the licensee's renewal application.

1507 Section 21. Paragraphs (s), (t), and (u) are added to
 1508 subsection (2) of section 494.0072, Florida Statutes, and
 1509 subsection (3) of that section is amended, to read:

1510 494.0072 Administrative penalties and fines; license
 1511 violations.--

1512 (2) Each of the following acts constitutes a ground for

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which the disciplinary actions specified in subsection (1) may be taken:

(s) Payment to the office for a license or permit with a check or electronic transmission of funds that is dishonored by the applicant's or licensee's financial institution.

(t) Having a final judgment entered against the applicant or licensee in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit.

(u)1. Having been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, state or federal agency, national securities exchange, national commodities exchange, national option exchange, national securities association, national commodities association, or national option association involving a violation of any federal or state securities or commodities law, or any rule or regulation adopted under such law, or involving a violation of any rule or regulation of any national securities, commodities, or options exchange or association.

2. Having been the subject of any injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers or lenders, money transmitters, or other related or similar industries.

(3) A mortgage lender or correspondent mortgage lender is subject to the disciplinary actions specified in subsection (1) if any officer, member, director, control person, joint

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1541 venturer, or ultimate equitable owner of a 10-percent or greater
1542 interest in the mortgage lender or correspondent mortgage
1543 lender, associate, or employee of the mortgage lender or
1544 correspondent mortgage lender violates any provision of
1545 subsection (2).

1546 Section 22. Subsection (2) of section 494.00721, Florida
1547 Statutes, is amended to read:

1548 494.00721 Net worth.--

1549 (2) If a mortgage lender or correspondent mortgage lender
1550 fails to satisfy the net worth requirements, the mortgage lender
1551 or correspondent mortgage lender shall immediately cease taking
1552 any new mortgage loan applications. Thereafter, the mortgage
1553 lender or correspondent mortgage lender shall have up to 60 days
1554 within which to satisfy the net worth requirements. If the
1555 licensee makes the office aware, prior to an examination, that
1556 the licensee no longer meets the net worth requirements, the
1557 mortgage lender or correspondent mortgage lender shall have 120
1558 days within which to satisfy the net worth requirements. A
1559 mortgage lender or correspondent mortgage lender shall not
1560 resume acting as a mortgage lender or correspondent mortgage
1561 lender without written authorization from the office, which
1562 authorization shall be granted if the mortgage lender or
1563 correspondent mortgage lender provides the office with
1564 documentation which satisfies the requirements of s.
1565 494.0061(2)~~(1)~~(c), s. 494.0062(2)~~(1)~~(c), or s. 494.0065(2),
1566 whichever is applicable.

1567 Section 23. Paragraph (c) of subsection (3) of section
1568 501.137, Florida Statutes, is amended to read:

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1569 501.137 Mortgage lenders; tax and insurance payments from
1570 escrow accounts; duties.--

1571 (3)

1572 (c) If the lender violates paragraph (a) and the premium
1573 payment is more than 90 days overdue or if the insurer refuses
1574 to reinstate the insurance policy, the lender shall pay the
1575 difference between the cost of the previous insurance policy and
1576 a new, comparable insurance policy for a period of 2 years. If
1577 the lender refuses, the lender is liable for the reasonable
1578 attorney's fees and costs of the property owner for a violation
1579 of this section.

1580 Section 24. Subsection (8) is added to section 516.01,
1581 Florida Statutes, to read:

1582 516.01 Definitions.--As used in this chapter, the term:

1583 (8) "Control person" means an individual, partnership,
1584 corporation, trust, or other organization that possesses the
1585 power, directly or indirectly, to direct the management or
1586 policies of a company, whether through ownership of securities,
1587 by contract, or otherwise. A person is presumed to control a
1588 company if, with respect to a particular company, that person:

1589 (a) Is a director, general partner, or officer exercising
1590 executive responsibility or having similar status or functions;

1591 (b) Directly or indirectly may vote 10 percent or more of
1592 a class of a voting security or sell or direct the sale of 10
1593 percent or more of a class of voting securities; or

1594 (c) In the case of a partnership, may receive upon
1595 dissolution or has contributed 10 percent or more of the
1596 capital.

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1597 Section 25. Section 516.03, Florida Statutes, is amended
1598 to read:
1599 516.03 Application for license; fees; etc.--
1600 (1) APPLICATION.--Application for a license to make loans
1601 under this chapter shall be in the form prescribed by rule of
1602 the commission. The commission may require each applicant to
1603 provide any information reasonably necessary to determine the
1604 applicant's eligibility for licensure. The applicant shall also
1605 provide information that the office requires concerning any
1606 officer, director, control person, member, partner, or joint
1607 venturer of the applicant or any person having the same or
1608 substantially similar status or performing substantially similar
1609 functions or concerning any individual who is the ultimate
1610 equitable owner of a 10-percent or greater interest in the
1611 applicant. The office may require information concerning any
1612 such applicant or person, including, but not limited to, his or
1613 her full name and any other names by which he or she may have
1614 been known, age, social security number, residential history,
1615 qualifications, educational and business history, and
1616 disciplinary and criminal history. The applicant must provide
1617 evidence of liquid assets of at least \$25,000, and shall contain
1618 the name, residence and business addresses of the applicant and,
1619 if the applicant is a copartnership or association, of every
1620 member thereof and, if a corporation, of each officer and
1621 director thereof, also the county and municipality with the
1622 street and number or approximate location where the business is
1623 to be conducted, and such further relevant information as the
1624 commission or office may require. At the time of making such

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application the applicant shall pay to the office a
nonrefundable biennial license fee of \$625. Applications, except
for applications to renew or reactivate a license, must also be
accompanied by a nonrefundable ~~an~~ investigation fee of \$200. An
application is considered received for purposes of s. 120.60
upon receipt of a completed application form as prescribed by
commission rule, a nonrefundable application fee of \$625, and
any other fee prescribed by law. The commission may adopt rules
requiring ~~to allow~~ electronic submission of any form, document,
or fee required by this act if such rules reasonably accommodate
technological or financial hardship. The commission may
prescribe by rule requirements and procedures for obtaining an
exemption due to a technological or financial hardship.

(2) FEES.--Fees ~~herein~~ provided for in this section shall
be collected by the office and shall be turned into the State
Treasury to the credit of the regulatory trust fund under the
office. The office shall have full power to employ such
examiners or clerks to assist the office as may from time to
time be deemed necessary and fix their compensation. The
commission may adopt rules requiring ~~to allow~~ electronic
submission of any fee required by this section if such rules
reasonably accommodate technological or financial hardship. The
commission may prescribe by rule requirements and procedures for
obtaining an exemption due to a technological or financial
hardship.

Section 26. Paragraph (a) of subsection (3) of section
516.031, Florida Statutes, is amended to read:
516.031 Finance charge; maximum rates.--

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(3) OTHER CHARGES.--

(a) In addition to the interest, delinquency, and insurance charges herein provided for, no further or other charges or amount whatsoever for any examination, service, commission, or other thing or otherwise shall be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan, except:

1. An amount not to exceed \$25 ~~\$10~~ to reimburse a portion of the costs for investigating the character and credit of the person applying for the loan;

2. An annual fee of \$25 on the anniversary date of each line-of-credit account;

3. Charges paid for brokerage fee on a loan or line of credit of more than \$10,000, title insurance, and the appraisal of real property offered as security when paid to a third party and supported by an actual expenditure;

4. Intangible personal property tax on the loan note or obligation when secured by a lien on real property;

5. The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter;

6. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan, if the premium does not exceed the fees which would otherwise be payable, which premium may be collected when the loan is made or at any time

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thereafter;

7. Actual and reasonable attorney's fees and court costs as determined by the court in which suit is filed;

8. Actual and commercially reasonable expenses of repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security; or

9. A delinquency charge not to exceed \$10 for each payment in default for a period of not less than 10 days, if the charge is agreed upon, in writing, between the parties before imposing the charge.

Any charges, including interest, in excess of the combined total of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but within 20 days from the discovery of such error.

Section 27. Section 516.05, Florida Statutes, is amended to read:

516.05 License.--

(1) Upon the filing of an application for a license and payment of all applicable fees, the office shall, unless the application is to renew or reactivate an existing license, make an investigation of the facts concerning the applicant's background ~~proposed activities~~. If the office determines that a license should be granted, it shall issue the license for a period not to exceed 2 years. Biennial licensure periods and

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1709 procedures for renewal of licenses shall be established by the
1710 rule of the commission. If the office determines that grounds
1711 exist under this chapter for denial of an application other than
1712 an application to renew a license, it shall deny such
1713 application, ~~return to the applicant the sum paid as a license~~
1714 ~~fee, and retain the investigation fee.~~

1715 (2) A license that is not renewed at the end of the
1716 biennium established by the commission shall automatically
1717 revert to inactive status. An inactive license may be
1718 reactivated upon submission of a completed reactivation
1719 application, payment of the biennial license fee, and payment of
1720 a reactivation fee which shall equal the biennial license fee. A
1721 license expires on the date at which it has been inactive for 6
1722 months.

1723 (3) Only one place of business for the purpose of making
1724 loans under this chapter may be maintained under one license,
1725 but the office may issue additional licenses to a licensee upon
1726 compliance with all the provisions of this chapter governing
1727 issuance of a single license.

1728 (4) Each licensee shall report, on a form prescribed by
1729 rule of the commission, any change to the information contained
1730 in any initial application form or any amendment to such
1731 application not later than 30 days after the change is
1732 effective.

1733 (5) Each licensee shall report any changes in the
1734 partners, officers, members, joint venturers, directors, or
1735 control persons of any licensee, or changes in the form of
1736 business organization, by written amendment in such form and at

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such time as the commission specifies by rule.

(a) In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a licensee, such person or group must submit an initial application for licensure before such purchase or acquisition at such time and in such form as the commission prescribes by rule.

(b) As used in this subsection, the term "controlling interest" means possession of the power to direct or cause the direction of the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who directly or indirectly has the right to vote 25 percent or more of the voting securities of a company or is entitled to 25 percent or more of the company's profits is presumed to possess a controlling interest.

(c) Any addition of a partner, officer, member, joint venturer, director, or control person of the applicant who does not have a controlling interest and who has not previously complied with the provisions of s. 516.03(1) shall be subject to such provisions unless required to file an initial application in accordance with paragraph (a). If the office determines that the licensee does not continue to meet licensure requirements, the office may bring administrative action in accordance with s. 516.07 to enforce the provisions of this chapter.

(d) The commission shall adopt rules pursuant to ss. 120.536(1) and 120.54 providing for the waiver of the application required by this subsection if the person or group of persons proposing to purchase or acquire a controlling

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1765 interest in a licensee has previously complied with the
1766 provisions of s. 516.03(1) with the same legal entity or is
1767 currently licensed with the office under this chapter.

1768 ~~(4) Prior to relocating his or her place of business, a~~
1769 ~~licensee must file with the office, in the manner prescribed by~~
1770 ~~commission rule, notice of the relocation.~~

1771 (6)(5) A licensee may conduct the business of making loans
1772 under this chapter within a place of business in which other
1773 business is solicited or engaged in, unless the office shall
1774 find that the conduct of such other business by the licensee
1775 results in an evasion of this chapter. Upon such finding, the
1776 office shall order the licensee to desist from such evasion;
1777 provided, however, that no license shall be granted to or
1778 renewed for any person or organization engaged in the pawnbroker
1779 business.

1780 ~~(6) If any person purchases substantially all of the~~
1781 ~~assets of any existing licensed place of business, the purchaser~~
1782 ~~shall give immediate notice thereof to the office and shall be~~
1783 ~~granted a 90-day temporary license for the place of business~~
1784 ~~within 10 days after the office's receipt of an application for~~
1785 ~~a permanent license. Issuance of a temporary license for a place~~
1786 ~~of business nullifies the existing license for the place of~~
1787 ~~business, and the temporary licensee is subject to any~~
1788 ~~disciplinary action provided for by this chapter.~~

1789 (7) Licenses are not transferable or assignable. A
1790 licensee may invalidate any license by delivering it to the
1791 office with a written notice of the delivery, but such delivery
1792 does not affect any civil or criminal liability or the authority

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to enforce this chapter for acts committed in violation thereof.

(8) The office may refuse to process an initial application for a license if the applicant or any person with power to direct the management or policies of the applicant's business is the subject of a pending criminal prosecution in any jurisdiction until conclusion of such criminal prosecution.

(9) A licensee that is the subject of a voluntary or involuntary bankruptcy filing must report such filing to the office within 7 business days after the filing date.

Section 28. Subsection (1) of section 516.07, Florida Statutes, is amended to read:

516.07 Grounds for denial of license or for disciplinary action.--

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2):

(a) A material misstatement of fact in an application for a license.+

(b) Failure to maintain liquid assets of at least \$25,000 at all times for the operation of business at a licensed location or proposed location.+

(c) Failure to demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.+

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(d) The violation, either knowingly or without the exercise of due care, of any provision of this chapter, any rule or order adopted under this chapter, or any written agreement entered into with the office.+

(e) Any act of fraud, misrepresentation, or deceit, regardless of reliance by or damage to a borrower, or any illegal activity, where such acts are in connection with a loan under this chapter. Such acts include, but are not limited to:

1. Willful imposition of illegal or excessive charges; or
2. Misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower.+

(f) The use of unreasonable collection practices or of false, deceptive, or misleading advertising, where such acts are in connection with the operation of a business to make consumer finance loans.+

(g) Any violation of part III of chapter 817 or part II of chapter 559 or of any rule adopted under part II of chapter 559.+

(h) Failure to maintain, preserve, and keep available for examination, all books, accounts, or other documents required by this chapter, by any rule or order adopted under this chapter, or by any agreement entered into with the office.+

(i) Refusal to permit inspection of books and records in an investigation or examination by the office or refusal to comply with a subpoena issued by the office.+

(j) Pleading nolo contendere to, or having been convicted or found guilty of, a crime involving fraud, dishonest dealing, or any act of moral turpitude, regardless of whether

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1849 adjudication is withheld.~~+~~

1850 (k) Paying money or anything else of value, directly or
1851 indirectly, to any person as compensation, inducement, or reward
1852 for referring loan applicants to a licensee.~~+~~

1853 (l) Allowing any person other than the licensee to use the
1854 licensee's business name, address, or telephone number in an
1855 advertisement.~~+~~

1856 (m) Accepting or advertising that the licensee accepts
1857 money on deposit or as consideration for the issuance or
1858 delivery of certificates of deposit, savings certificates, or
1859 similar instruments, except to the extent permitted under
1860 chapter 517.~~+~~~~or~~

1861 (n) Failure to pay any fee, charge, or fine imposed or
1862 assessed pursuant to this chapter or any rule adopted under this
1863 chapter.

1864 (o) Using the name or logo of a financial institution, as
1865 defined in s. 655.005(1), or its affiliates or subsidiaries when
1866 marketing or soliciting existing or prospective customers if
1867 such marketing materials are used without the written consent of
1868 the financial institution and in a manner that would lead a
1869 reasonable person to believe that the material or solicitation
1870 originated from, was endorsed by, or is related to or the
1871 responsibility of the financial institution or its affiliates or
1872 subsidiaries.

1873

(p) Payment to the office for a license or permit with a
1874 check or electronic transmission of funds that is dishonored by
1875 the applicant's or licensee's financial institution.

1876 Section 29. Section 516.08, Florida Statutes, is repealed.

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Section 30. Subsection (3) is added to section 516.12, Florida Statutes, to read:

516.12 Records to be kept by licensee.--

(3) The commission may prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of licensees for purposes of enabling the office to determine the licensee's compliance with ss. 516.001-516.36. In addition, the commission may prescribe by rule the requirements for the destruction of books, accounts, records, and documents retained by the licensee after completion of the time period specified in subsection (1).

Section 31. Section 516.19, Florida Statutes, is amended to read:

516.19 Penalties.--Any person who violates any of the provisions of s. 516.02, s. 516.031, s. 516.05(3), ~~s. 516.05(4)~~, s. 516.05(6)~~(5)~~, or s. 516.07(1)(e) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 32. Subsection (4) of section 517.021, Florida Statutes, is amended to read:

517.021 Definitions.--When used in this chapter, unless the context otherwise indicates, the following terms have the following respective meanings:

(4) "Branch office" means any location in this state of a dealer or investment adviser at which one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security or

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any location that is held out as such. The commission may adopt by rule exceptions to this definition for dealers in order to maintain consistency with the definition of a branch office used by self-regulatory organizations authorized by the Securities and Exchange Commission, including, but not limited to, the National Association of Securities Dealers or the New York Stock Exchange. The commission may adopt by rule exceptions to this definition for investment advisers ~~office of a dealer or investment adviser located in this state, other than the principal office of the dealer or investment adviser, which nonprincipal office is owned or controlled by the dealer or investment adviser for the purpose of conducting a securities business.~~

Section 33. Subsection (9) of section 517.051, Florida Statutes, is amended to read:

517.051 Exempt securities.--The exemptions provided herein from the registration requirements of s. 517.07 are self-executing and do not require any filing with the office prior to claiming such exemption. Any person who claims entitlement to any of these exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following securities:

(9) A security issued by a corporation organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, no part of the net earnings of which corporation inures to the benefit of any private stockholder or

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1933 individual, or any security of a fund that is excluded from the
 1934 definition of an investment company under s. 3(c)(10)(B) of the
 1935 Investment Company Act of 1940; provided that no person shall
 1936 directly or indirectly offer or sell securities under this
 1937 subsection except by an offering circular containing full and
 1938 fair disclosure, as prescribed by the rules of the commission,
 1939 of all material information, including, but not limited to, a
 1940 description of the securities offered and terms of the offering,
 1941 a description of the nature of the issuer's business, a
 1942 statement of the purpose of the offering and the intended
 1943 application by the issuer of the proceeds thereof, and financial
 1944 statements of the issuer prepared in conformance with United
 1945 States generally accepted accounting principles. Section 6(c) of
 1946 the Philanthropy Protection Act of 1995, Pub. L. No. 104-62,
 1947 shall not preempt any provision of this chapter.

1948 Section 34. Subsection (18) of section 517.061, Florida
 1949 Statutes, is amended to read:

1950 517.061 Exempt transactions.--The exemption for each
 1951 transaction listed below is self-executing and does not require
 1952 any filing with the office prior to claiming such exemption. Any
 1953 person who claims entitlement to any of the exemptions bears the
 1954 burden of proving such entitlement in any proceeding brought
 1955 under this chapter. The registration provisions of s. 517.07 do
 1956 not apply to any of the following transactions; however, such
 1957 transactions are subject to the provisions of ss. 517.301,
 1958 517.311, and 517.312:

1959 (18) The offer or sale of any security effected by or
 1960 through a person in compliance with ~~registered pursuant to s.~~

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1961 517.12(17).

1962 Section 35. Paragraph (g) of subsection (3) of section
1963 517.081, Florida Statutes, is amended to read:

1964 517.081 Registration procedure.--

1965 (3) The office may require the applicant to submit to the
1966 office the following information concerning the issuer and such
1967 other relevant information as the office may in its judgment
1968 deem necessary to enable it to ascertain whether such securities
1969 shall be registered pursuant to the provisions of this section:

1970 (g)1. A specimen copy of the security and a copy of any
1971 circular, prospectus, advertisement, or other description of
1972 such securities.

1973 2. The commission shall adopt a form for a simplified
1974 offering circular to be used solely by corporations to register,
1975 under this section, securities of the corporation that are sold
1976 in offerings in which the aggregate offering price in any
1977 consecutive 12-month period does not exceed the amount provided
1978 in s. 3(b) of the Securities Act of 1933. The following issuers
1979 shall not be eligible to submit a simplified offering circular
1980 adopted pursuant to this subparagraph:

1981 a. An issuer seeking to register securities for resale by
1982 persons other than the issuer.

1983 b. An issuer who is subject to any of the
1984 disqualifications described in 17 C.F.R. s. 230.262, adopted
1985 pursuant to the Securities Act of 1933, or who has been or is
1986 engaged or is about to engage in an activity that would be
1987 grounds for denial, revocation, or suspension under s. 517.111.
1988 For purposes of this subparagraph, an issuer includes an

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issuer's director, officer, shareholder who owns at least 10 percent of the shares of the issuer, promoter, or selling agent of the securities to be offered or any officer, director, or partner of such selling agent.

c. An issuer who is a development-stage company that either has no specific business plan or purpose or has indicated that its business plan is to merge with an unidentified company or companies.

d. An issuer of offerings in which the specific business or properties cannot be described.

e. Any issuer the office determines is ineligible if the form would not provide full and fair disclosure of material information for the type of offering to be registered by the issuer.

f. Any corporation which has failed to provide the office the reports required for a previous offering registered pursuant to this subparagraph.

As a condition precedent to qualifying for use of the simplified offering circular, a corporation shall agree to provide the office with an annual financial report containing a balance sheet as of the end of the issuer's fiscal year and a statement of income for such year, prepared in accordance with United States generally accepted accounting principles and accompanied by an independent accountant's report. If the issuer has more than 100 security holders at the end of a fiscal year, the financial statements must be audited. Annual financial reports must be filed with the office within 90 days after the close of

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2017 the issuer's fiscal year for each of the first 5 years following
2018 the effective date of the registration.

2019 Section 36. Subsections (6), (7), (10), (11), (15), and
2020 (17) of section 517.12, Florida Statutes, are amended to read:

2021 517.12 Registration of dealers, associated persons,
2022 investment advisers, and branch offices.--

2023 (6) A dealer, associated person, investment adviser, or
2024 branch office, in order to obtain registration, must file with
2025 the office a written application, on a form which the commission
2026 may by rule prescribe, ~~verified under oath~~. The commission may
2027 establish, by rule, procedures for depositing fees and filing
2028 documents by electronic means provided such procedures provide
2029 the office with the information and data required by this
2030 section. Each dealer or investment adviser must also file an
2031 irrevocable written consent to service of civil process similar
2032 to that provided for in s. 517.101. The application shall
2033 contain such information as the commission or office may require
2034 concerning such matters as:

2035 (a) The name of the applicant and the address of its
2036 principal office and each office in this state.

2037 (b) The applicant's form and place of organization; and,
2038 if the applicant is a corporation, a copy of its articles of
2039 incorporation and amendments to the articles of incorporation
2040 or, if a partnership, a copy of the partnership agreement.

2041 (c) The applicant's proposed method of doing business and
2042 financial condition and history, including a certified financial
2043 statement showing all assets and all liabilities, including
2044 contingent liabilities of the applicant as of a date not more

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2045 than 90 days prior to the filing of the application.

2046 (d) The names and addresses of all associated persons of
2047 the applicant to be employed in this state and the offices to
2048 which they will be assigned.

2049 (7) The application shall also contain such information as
2050 the commission or office may require about the applicant; any
2051 partner, officer, or director of the applicant or any person
2052 having a similar status or performing similar functions; any
2053 person directly or indirectly controlling the applicant; or any
2054 employee of a dealer or of an investment adviser rendering
2055 investment advisory services. Each applicant shall file a
2056 complete set of fingerprints. A fingerprint card submitted to
2057 the office must be taken by an authorized law enforcement agency
2058 officer. The office shall submit the ~~Such~~ fingerprints shall be
2059 submitted to the Department of Law Enforcement for state
2060 processing and the Department of Law Enforcement shall forward
2061 the fingerprints to ~~or~~ the Federal Bureau of Investigation for
2062 state and federal processing. The cost of the fingerprint
2063 processing may be borne by the office, the employer, or the
2064 person subject to the background check. The Department of Law
2065 Enforcement shall submit an invoice to the office for the
2066 fingerprints received each month. The office shall screen the
2067 background results to determine if the applicant meets licensure
2068 requirements. The commission may waive, by rule, the requirement
2069 that applicants must file a set of fingerprints or the
2070 requirement that such fingerprints must be processed by the
2071 Department of Law Enforcement or the Federal Bureau of
2072 Investigation. The commission or office may require information

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about any such applicant or person concerning such matters as:

(a) His or her full name, and any other names by which he or she may have been known, and his or her age, social security number, photograph, qualifications, and educational and business history.

(b) Any injunction or administrative order by a state or federal agency, national securities exchange, or national securities association involving a security or any aspect of the securities business and any injunction or administrative order by a state or federal agency regulating banking, insurance, finance, or small loan companies, real estate, mortgage brokers, or other related or similar industries, which injunctions or administrative orders relate to such person.

(c) His or her conviction of, or plea of nolo contendere to, a criminal offense or his or her commission of any acts which would be grounds for refusal of an application under s. 517.161.

(d) The names and addresses of other persons of whom the office may inquire as to his or her character, reputation, and financial responsibility.

(10) An applicant for registration shall pay an assessment fee of \$200, in the case of a dealer or investment adviser, or \$40, in the case of an associated person. The assessment fee of an associated person shall be reduced to \$30, but only after the office determines, by final order, that sufficient funds have been allocated to the Securities Guaranty Fund pursuant to s. 517.1203 to satisfy all valid claims filed in accordance with s. 517.1203(2) and after all amounts payable under any service

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2101 contract entered into by the office pursuant to s. 517.1204, and
 2102 all notes, bonds, certificates of indebtedness, other
 2103 obligations, or evidences of indebtedness secured by such notes,
 2104 bonds, certificates of indebtedness, or other obligations, have
 2105 been paid or provision has been made for the payment of such
 2106 amounts, notes, bonds, certificates of indebtedness, other
 2107 obligations, or evidences of indebtedness. An associated person
 2108 ~~may not having current fingerprint cards filed with the National~~
 2109 ~~Association of Securities Dealers or a national securities~~
 2110 ~~exchange registered with the Securities and Exchange Commission~~
 2111 shall be assessed an additional fee to cover the cost for the
 2112 ~~said~~ fingerprint cards to be processed by the office. Such fee
 2113 shall be determined by rule of the commission. Each dealer and
 2114 each investment adviser shall pay an assessment fee of \$100 for
 2115 each office in this state, ~~except its designated principal~~
 2116 ~~office~~. Such fees become the revenue of the state, except for
 2117 those assessments provided for under s. 517.131(1) until such
 2118 time as the Securities Guaranty Fund satisfies the statutory
 2119 limits, and are not returnable in the event that registration is
 2120 withdrawn or not granted.

2121 (11) If the office finds that the applicant is of good
 2122 repute and character and has complied with the provisions of
 2123 this chapter and the rules made pursuant hereto, it shall
 2124 register the applicant. The registration of each dealer,
 2125 investment adviser, branch office, and associated person expires
 2126 will expire on December 31 of the year the registration became
 2127 effective unless the registrant has renewed his or her
 2128 registration on or before that date. The commission may

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2129 establish by rule procedures for renewing the registration of a
 2130 branch office through the Central Registration Depository, and
 2131 ~~the registration of each branch office will expire on March 31,~~
 2132 ~~of the year in which it became effective unless the registrant~~
 2133 ~~has renewed its registration on or before that date.~~
 2134 Registration may be renewed by furnishing such information as
 2135 the commission may require, together with payment of the fee
 2136 required in subsection (10) for dealers, investment advisers,
 2137 associated persons, or branch offices and the payment of any
 2138 amount lawfully due and owing to the office pursuant to any
 2139 order of the office or pursuant to any agreement with the
 2140 office. Any dealer, investment adviser, or associated person
 2141 registrant who has not renewed a registration by the time the
 2142 current registration expires may request reinstatement of such
 2143 registration by filing with the office, on or before January 31
 2144 of the year following the year of expiration, such information
 2145 as may be required by the commission, together with payment of
 2146 the fee required in subsection (10) for dealers, investment
 2147 advisers, or associated persons and a late fee equal to the
 2148 amount of such fee. Any reinstatement of registration granted by
 2149 the office during the month of January shall be deemed effective
 2150 retroactive to January 1 of that year.

2151 (15) (a) In order to facilitate uniformity and streamline
 2152 procedures for persons who are subject to registration in
 2153 multiple jurisdictions, the commission may adopt by rule uniform
 2154 forms that have been approved by the Securities and Exchange
 2155 Commission, and any subsequent amendments to such forms, if the
 2156 forms are substantially consistent with the provisions of this

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chapter. Uniform forms that the commission may adopt to
administer this section include, but are not limited to:

1. Form BR, Uniform Branch Office Registration Form,
adopted October 2005.

2. Form U4, Uniform Application for Securities Industry
Registration or Transfer, adopted October 2005.

3. Form U5, Uniform Termination Notice for Securities
Industry Registration, adopted October 2005.

4. Form ADV, Uniform Application for Investment Adviser
Registration, adopted October 2003.

5. Form ADV-W, Notice of Withdrawal from Registration as
an Investment Adviser, adopted October 2003.

6. Form BD, Uniform Application for Broker-Dealer
Registration, adopted July 1999.

7. Form BDW, Uniform Request for Broker-Dealer Withdrawal,
adopted August 1999.

(b) In lieu of filing with the office the applications
specified in subsection (6), the fees required by subsection
(10), the renewals required by subsection (11), and the
termination notices required by subsection (12), the commission
may by rule establish procedures for the deposit of such fees
and documents with the Central Registration Depository or the
Investment Adviser Registration Depository of the National
Association of Securities Dealers, Inc., as developed under
contract with the North American Securities Administrators
Association, Inc.; ~~provided, however, that such procedures shall~~
~~provide the office with the information and data as required by~~
~~this section.~~

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2185 (17) (a) A dealer that is located in Canada, does not have
2186 an and has no office or other physical presence in this state,
2187 and has made a notice filing in accordance with this subsection
2188 is exempt from the registration requirements of this section and
2189 may, provided the dealer is registered in accordance with this
2190 section, effect transactions in securities with or for, or
2191 induce or attempt to induce the purchase or sale of any security
2192 by:

2193 1. A person from Canada who is present temporarily resides
2194 in this state and with whom the Canadian dealer had a bona fide
2195 dealer-client relationship before the person entered the United
2196 States; or

2197 2. A person from Canada who is present in a resident of
2198 this state, and whose transactions are in a self-directed, tax-
2199 advantaged tax advantage retirement plan in Canada of which the
2200 person is the holder or contributor.

2201 (b) A notice filing under this subsection must consist of
2202 documents the commission by rule requires to be filed, together
2203 with a consent to service of process and a nonrefundable filing
2204 fee of \$200. The commission may establish by rule procedures for
2205 the deposit of fees and the filing of documents to be made by
2206 electronic means, if such procedures provide the office with the
2207 information and data required by this section ~~An associated~~
2208 ~~person who represents a Canadian dealer registered under this~~
2209 ~~section may, provided the agent is registered in accordance with~~
2210 ~~this section, effect transactions in securities in this state as~~
2211 ~~permitted for a dealer, under subsection (a).~~

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(c) A Canadian dealer may make a notice filing register
under this subsection if the ~~section provided that such dealer~~
provides to the office:

1. A notice filing ~~Files an application in the form the~~
commission requires by rule ~~required by the jurisdiction in~~
~~which the dealer has a head office.~~

2. ~~Files~~ A consent to service of process.

3. Evidence that the Canadian dealer is registered as a
dealer ~~in good standing~~ in the jurisdiction in which the
dealer's main office is located ~~from which it is effecting~~
~~transactions into this state and files evidence of such~~
~~registration with the office.~~

4. Evidence that the Canadian dealer is a member of a
self-regulatory organization or stock exchange in Canada.

(d) The office may issue a permit to evidence the
effectiveness of a notice filing for a Canadian dealer.

(e) A notice filing is effective upon receipt by the
office. A notice filing expires on December 31 of the year in
which the filing becomes effective unless the Canadian dealer
has renewed the filing on or before that date. A Canadian dealer
may annually renew a notice filing by furnishing to the office
such information as the office requires together with a renewal
fee of \$200 and the payment of any amount due and owing the
office pursuant to any agreement with the office. Any Canadian
dealer who has not renewed a notice filing by the time a current
notice filing expires may request reinstatement of such notice
filing by filing with the office, on or before January 31 of the
year following the year the notice filing expires, such

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2240 information as the commission requires by rule, together with
 2241 the payment of \$200 and a late fee of \$200. A reinstatement of a
 2242 notice filing granted by the office during the month of January
 2243 is effective retroactively to January 1 of that year.

2244 (f)(d) An associated person who represents a Canadian
 2245 dealer who has made a notice filing ~~registered~~ under this
 2246 subsection is exempt from the registration requirements of this
 2247 section and may effect section in effecting transactions in
 2248 securities in this state as permitted for a dealer under
 2249 paragraph (a) if such person may register under this section
 2250 ~~provided that such person:~~

2251 ~~1. Files an application in the form required by the~~
 2252 ~~jurisdiction in which the dealer has its head office.~~

2253 ~~2. is registered in good standing in the jurisdiction from~~
 2254 ~~which he or she is effecting transactions into this state and~~
 2255 ~~files evidence of such registration with the office.~~

2256 ~~(e) If the office finds that the applicant is of good~~
 2257 ~~repute and character and has complied with the provisions of~~
 2258 ~~this chapter, the office shall register the applicant.~~

2259 (g)(f) A Canadian dealer who has made a notice filing
 2260 registered under this subsection ~~section~~ shall:

2261 1. Maintain its provincial or territorial registration and
 2262 its membership in a self-regulatory organization or stock
 2263 exchange in good standing.

2264 2. Provide the office upon request with its books and
 2265 records relating to its business in this state as a dealer.

2266 3. Provide the office upon request notice of each civil,
 2267 criminal, or administrative action initiated against the dealer.

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4. Disclose to its clients in this state that the dealer and its associated persons ~~agents~~ are not subject to the full regulatory requirements under this chapter.

5. Correct any inaccurate information within 30 days ~~after, if~~ the information contained in the notice filing ~~application form~~ becomes inaccurate for any reason ~~before or~~ ~~after the dealer becomes registered.~~

~~(h) (g)~~ An associated person representing ~~of~~ a Canadian dealer who has made a notice filing ~~registered~~ under this subsection ~~section~~ shall:

1. Maintain provincial or territorial registration in good standing.

2. Provide the office upon request with notice of each civil, criminal, or administrative action initiated against such person.

~~3. Through the dealer, correct any inaccurate information within 30 days, if the information contained in the application form becomes inaccurate for any reason before or after the associated person becomes registered.~~

(i) A notice filing may be terminated by filing notice of such termination with the office. Unless another date is specified by the Canadian dealer, such notice is effective upon receipt of the notice by the office.

(j) All fees collected under this subsection become the revenue of the state, except those assessments provided for under s. 517.131(1), until the Securities Guaranty Fund has satisfied the statutory limits. Such fees are not returnable if a notice filing is withdrawn.

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~~(h) Renewal applications for Canadian dealers and associated persons under this section must be filed before December 31 each year. Every applicant for registration or renewal registration under this section shall pay the fee for dealers and associated persons under this chapter.~~

Section 37. Paragraphs (b) and (e) of subsection (3) of section 517.131, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

517.131 Securities Guaranty Fund.--

(3) Any person is eligible to seek recovery from the Securities Guaranty Fund if:

(b) Such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and by her or his search the person has discovered no property or assets; or she or he has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount thereby realized was insufficient to satisfy the judgment. To verify compliance with such condition, the office may require such person to have a writ of execution be issued upon such judgment, and may further require a showing that no personal or real property of the judgment debtor liable to be levied upon in complete satisfaction of the judgment can be found, or may require an affidavit from the claimant setting forth the reasonable searches and inquiries undertaken and the result of those searches and inquiries.

(e) The office waives compliance with the requirements of

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paragraph (a) or paragraph (b). The office may waive such compliance if the dealer, investment adviser, or associated person which is the subject of the claim filed with the office is the subject of any proceeding in which a receiver has been appointed by a court of competent jurisdiction. If the office waives such compliance, the office may, upon petition by the debtor or the court-appointed trustee, examiner, or receiver, distribute funds from the Securities Guaranty Fund up to the amount allowed under s. 517.141. Any waiver granted pursuant to this section shall be considered a judgment for purposes of complying with the requirements of this section and of s. 517.141.

(5) The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 specifying the procedures for complying with subsections (2), (3), and (4), including rules for the form of submission and guidelines for the sufficiency and content of submissions of notices and claims.

Section 38. Subsections (2) and (5) of section 517.141, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

517.141 Payment from the fund.--

(2) Regardless of the number of claims or claimants involved, payments for claims shall be limited in the aggregate to \$100,000 against any one dealer, investment adviser, or associated person. If the total claims exceed the aggregate limit of \$100,000, the office shall prorate the payment based upon the ratio that the person's claim bears to the total claims filed.

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2352 (5) If the final judgment ~~that which~~ gave rise to the
2353 claim is overturned in any appeal or in any collateral
2354 proceeding, the claimant shall reimburse the fund all amounts
2355 paid from the fund to the claimant on the claim. If the claimant
2356 satisfies the judgment specified in s. 517.131(3)(a), the
2357 claimant shall reimburse the fund all amounts paid from the fund
2358 to the claimant on the claim. Such reimbursement shall be paid
2359 to the office within 60 days after the final resolution of the
2360 appellate or collateral proceedings or the satisfaction of
2361 judgment, with the 60-day period commencing on the date the
2362 final order or decision is entered in such proceedings.

2363 (11) The commission may adopt rules pursuant to ss.
2364 120.536(1) and 120.54 specifying procedures for complying with
2365 this section, including rules for the form of submission and
2366 guidelines for the sufficiency and content of submissions of
2367 notices and claims.

2368 Section 39. Subsection (1) of section 517.161, Florida
2369 Statutes, is amended to read:

2370 517.161 Revocation, denial, or suspension of registration
2371 of dealer, investment adviser, associated person, or branch
2372 office.--

2373 (1) Registration under s. 517.12 may be denied or any
2374 registration granted may be revoked, restricted, or suspended by
2375 the office if the office determines that such applicant or
2376 registrant:

2377 (a) Has violated any provision of this chapter or any rule
2378 or order made under this chapter;

2379 (b) Has made a material false statement in the application

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2380 for registration;

2381 (c) Has been guilty of a fraudulent act in connection with
2382 rendering investment advice or in connection with any sale of
2383 securities, has been or is engaged or is about to engage in
2384 making fictitious or pretended sales or purchases of any such
2385 securities or in any practice involving the rendering of
2386 investment advice or the sale of securities which is fraudulent
2387 or in violation of the law;

2388 (d) Has made a misrepresentation or false statement to, or
2389 concealed any essential or material fact from, any person in the
2390 rendering of investment advice or the sale of a security to such
2391 person;

2392 (e) Has failed to account to persons interested for all
2393 money and property received;

2394 (f) Has not delivered, after a reasonable time, to persons
2395 entitled thereto securities held or agreed to be delivered by
2396 the dealer, broker, or investment adviser, as and when paid for,
2397 and due to be delivered;

2398 (g) Is rendering investment advice or selling or offering
2399 for sale securities through any associated person not registered
2400 in compliance with the provisions of this chapter;

2401 (h) Has demonstrated unworthiness to transact the business
2402 of dealer, investment adviser, or associated person;

2403 (i) Has exercised management or policy control over or
2404 owned 10 percent or more of the securities of any dealer or
2405 investment adviser that has been declared bankrupt, or had a
2406 trustee appointed under the Securities Investor Protection Act;
2407 or is, in the case of a dealer or investment adviser, insolvent;

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2408 (j) Has been convicted of, or has entered a plea of guilty
2409 or nolo contendere to, a crime against the laws of this state or
2410 any other state or of the United States or of any other country
2411 or government which relates to registration as a dealer,
2412 investment adviser, issuer of securities, associated person, or
2413 branch office; which relates to the application for such
2414 registration; or which involves moral turpitude or fraudulent or
2415 dishonest dealing;

2416 (k) Has had a final judgment entered against her or him in
2417 a civil action upon grounds of fraud, embezzlement,
2418 misrepresentation, or deceit;

2419 (l) Is of bad business repute; ~~or~~

2420 (m) Has been the subject of any decision, finding,
2421 injunction, suspension, prohibition, revocation, denial,
2422 judgment, or administrative order by any court of competent
2423 jurisdiction, administrative law judge, or by any state or
2424 federal agency, national securities, commodities, or option
2425 exchange, or national securities, commodities, or option
2426 association, involving a violation of any federal or state
2427 securities or commodities law or any rule or regulation
2428 promulgated thereunder, or any rule or regulation of any
2429 national securities, commodities, or options exchange or
2430 national securities, commodities, or options association, or has
2431 been the subject of any injunction or adverse administrative
2432 order by a state or federal agency regulating banking,
2433 insurance, finance or small loan companies, real estate,
2434 mortgage brokers or lenders, money transmitters, or other
2435 related or similar industries. For purposes of this subsection,

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the office may not deny registration to any applicant who has been continuously registered with the office for 5 years from the entry of such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order provided such decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order has been timely reported to the office pursuant to the commission's rules; ~~or-~~

(n) Made payment to the office for a registration or notice filing with a check or electronic transmission of funds that is dishonored by the applicant's, registrant's, or notice filer's financial institution.

Section 40. Section 520.02, Florida Statutes, is amended to read:

520.02 Definitions.--In this act, unless the context or subject matter otherwise requires:

(1) "Branch" means any location, other than a licensee's principal place of business, at which a licensee operates or conducts business under this act or which a licensee owns or controls for the purpose of conducting business under this act.

(2) "Cash price" means the price at which a seller, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. At the seller's option, the term "cash price" may include the price of accessories, services related to the sale, service contracts, and taxes and fees for license, title, and registration of the motor vehicle. The term "cash price" does not include any finance charge.

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(3) "Commission" means the Financial Services Commission.

(4) "Control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to control a company if, with respect to a particular company, that person:

(a) Is a director, general partner, or officer exercising executive responsibility or having similar status or functions;

(b) Directly or indirectly may vote 10 percent or more of a class of a voting security or sell or direct the sale of 10 percent or more of a class of voting securities; or

(c) In the case of a partnership, may receive upon dissolution or has contributed 10 percent or more of the capital.

(5) "Down payment" means the amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a down payment may be treated as part of the down payment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(6) "Finance charge" means the cost of consumer credit as a dollar amount. The term "finance charge" includes any charge payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to or a condition of the extension of credit. The term "finance charge" does not

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2491 include any charge of a type payable in a comparable cash
2492 transaction.

2493 (7) "Holder" of a retail installment contract means the
2494 retail seller of a motor vehicle retail installment contract or
2495 an assignee of such contract.

2496 (8) "Mobile home" means a structure, transportable in one
2497 or more sections, which is 8 body feet or more in width and is
2498 32 body feet or more in length, designed to be used as a
2499 dwelling with or without a permanent foundation when connected
2500 to the required utilities, and includes the plumbing, heating,
2501 air-conditioning, and electrical systems contained therein.

2502 (9) "Motor vehicle" means any device or vehicle, including
2503 automobiles, motorcycles, motor trucks, trailers, mobile homes,
2504 and all other vehicles operated over the public highways and
2505 streets of this state and propelled by power other than muscular
2506 power, but excluding traction engines, road rollers, implements
2507 of husbandry and other agricultural equipment, and vehicles
2508 which run only upon a track.

2509 (10)~~(15)~~ "Motor vehicle retail installment seller" or
2510 "seller" means a person engaged in the business of selling motor
2511 vehicles to retail buyers in retail installment transactions.

2512 (11)~~(4)~~ "Office" means the Office of Financial Regulation
2513 of the commission.

2514 (12)~~(10)~~ "Official fees" means fees and charges prescribed
2515 by law which actually are or will be paid to public officials
2516 for determining the existence of, or for perfecting, releasing,
2517 or satisfying, any security related to the credit transaction,
2518 or the premium payable for any insurance in lieu of perfecting

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2519 any security interest otherwise required by the creditor in
2520 connection with the transaction, if the premium does not exceed
2521 the fees and charges which would otherwise be payable to public
2522 officials.

2523 (13)~~(11)~~ "Person" means an individual, partnership,
2524 corporation, association, and any other group however organized.

2525 (14)~~(12)~~ "Principal place of business" means the physical
2526 location designated on the licensee's application for licensure,
2527 unless otherwise designated as required by this chapter.

2528 (15)~~(13)~~ "Retail buyer" or "buyer" means a person who buys
2529 a motor vehicle from a seller not principally for the purpose of
2530 resale, and who executes a retail installment contract in
2531 connection therewith or a person who succeeds to the rights and
2532 obligations of such person.

2533 (16)~~(14)~~ "Retail installment contract" or "contract" means
2534 an agreement, entered into in this state, pursuant to which the
2535 title to, or a lien upon the motor vehicle, which is the subject
2536 matter of a retail installment transaction, is retained or taken
2537 by a seller from a retail buyer as security, in whole or in
2538 part, for the buyer's obligation. The term includes a
2539 conditional sales contract and a contract for the bailment or
2540 leasing of a motor vehicle by which the bailee or lessee
2541 contracts to pay as compensation for its use a sum substantially
2542 equivalent to or in excess of its value and by which it is
2543 agreed that the bailee or lessee is bound to become, or for no
2544 further or a merely nominal consideration, has the option of
2545 becoming, the owner of the motor vehicle upon full compliance
2546 with the provisions of the contract.

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2547 (17)~~(16)~~ "Retail installment transaction" means any
2548 transaction evidenced by a retail installment contract entered
2549 into between a retail buyer and a seller wherein the retail
2550 buyer buys a motor vehicle from the seller at a deferred payment
2551 price payable in one or more deferred installments.

2552 (18)~~(17)~~ "Sales finance company" means a person engaged in
2553 the business of purchasing retail installment contracts from one
2554 or more sellers. The term includes, but is not limited to, a
2555 bank or trust company, if so engaged. The term does not include
2556 the pledge of an aggregate number of such contracts to secure a
2557 bona fide loan thereon.

2558 (19)~~(18)~~ Words in the singular include the plural and vice
2559 versa.

2560 Section 41. Subsections (2) through (5) of section 520.03,
2561 Florida Statutes, are amended to read:

2562 520.03 Licenses.--

2563 (2) An application for a license under this part must be
2564 submitted to the office in such form as the commission may
2565 prescribe by rule. The commission may require each applicant to
2566 provide any information reasonably necessary to determine the
2567 applicant's eligibility for licensure. The applicant shall also
2568 provide information that the office requires concerning any
2569 officer, director, control person, member, partner, or joint
2570 venturer of the applicant or any person having the same or
2571 substantially similar status or performing substantially similar
2572 functions or any individual who is the ultimate equitable owner
2573 of a 10-percent or greater interest in the applicant. The office
2574 may require information concerning any such applicant or person,

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2575 including, but not limited to, his or her full name and any
 2576 other names by which he or she may have been known, age, social
 2577 security number, residential history, qualifications,
 2578 educational and business history, and disciplinary and criminal
 2579 history. If the office determines that an application should be
 2580 granted, it shall issue the license for a period not to exceed 2
 2581 years. A nonrefundable application fee of \$175 shall accompany
 2582 an initial application for the principal place of business and
 2583 each application for a branch location of a retail installment
 2584 seller who is required to be licensed under this chapter. An
 2585 application is considered received for purposes of s. 120.60
 2586 upon receipt of a completed application form as prescribed by
 2587 commission rule, a nonrefundable application fee of \$175, and
 2588 any other fee prescribed by law.

2589 (3) The nonrefundable renewal fee for a motor vehicle
 2590 retail installment seller license shall be \$175. The commission
 2591 shall establish by rule biennial licensure periods and
 2592 procedures for renewal of licenses. A license that is not
 2593 renewed by the end of the biennium established by the commission
 2594 shall revert from active to inactive status. An inactive license
 2595 may be reactivated within 6 months after becoming inactive upon
 2596 filing a completed reactivation form, payment of the
 2597 nonrefundable renewal fee, and payment of a reactivation fee
 2598 equal to the nonrefundable renewal fee. A license that is not
 2599 reactivated within 6 months after becoming inactive
 2600 automatically expires.

2601 (4) ~~Each license shall specify the location for which it~~
 2602 ~~is issued and must be conspicuously displayed at that location.~~

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2603 ~~Prior to relocating a principal place of business or any branch~~
 2604 ~~location, the licensee must provide to the office notice of the~~
 2605 ~~relocation in a form prescribed by commission rule.~~ A licensee
 2606 may not transact business as a motor vehicle retail installment
 2607 seller except under the name by which it is licensed. Licenses
 2608 issued under this part are not transferable or assignable.

2609 (5) The office may deny an initial application for a
 2610 license under this part if the applicant or any officer,
 2611 director, control person, member, partner, or joint venturer
 2612 ~~person with power to direct the management or policies~~ of the
 2613 applicant is the subject of a pending criminal prosecution or
 2614 governmental enforcement action, in any jurisdiction, until
 2615 conclusion of such criminal prosecution or enforcement action.

2616 Section 42. Subsections (10) through (18) of section
 2617 520.31, Florida Statutes, are renumbered as subsections (11)
 2618 through (19), respectively, subsection (4) of that section is
 2619 renumbered as subsection (10), and a new subsection (4) is added
 2620 to that section, to read:

2621 520.31 Definitions.--Unless otherwise clearly indicated by
 2622 the context, the following words when used in this act, for the
 2623 purposes of this act, shall have the meanings respectively
 2624 ascribed to them in this section:

2625 (4) "Control person" means an individual, partnership,
 2626 corporation, trust, or other organization that possesses the
 2627 power, directly or indirectly, to direct the management or
 2628 policies of a company, whether through ownership of securities,
 2629 by contract, or otherwise. A person is presumed to control a
 2630 company if, with respect to a particular company, that person:

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(a) Is a director, general partner, or officer exercising executive responsibility or having similar status or functions;

(b) Directly or indirectly has the right to vote 10 percent or more of a class of a voting security or has the power to sell or direct the sale of 10 percent or more of a class of voting securities; or

(c) In the case of a partnership, has the right to receive upon dissolution or has contributed 10 percent or more of the capital.

Section 43. Subsections (2) through (5) of section 520.32, Florida Statutes, are amended to read:

520.32 Licenses.--

(2) An application for a license under this part must be submitted to the office in such form as the commission may prescribe by rule. The commission may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including his or her full name and any other names by which he or she may have been known, age, social security number, residential history, qualifications, educational and business history, and disciplinary and criminal history. If the office

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determines that an application should be granted, it shall issue the license for a period not to exceed 2 years. A nonrefundable application fee of \$175 shall accompany an initial application for the principal place of business and each application for a branch location of a retail installment seller. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of \$175, and any other fee prescribed by law.

(3) The nonrefundable renewal fee for a retail seller license shall be \$175. Biennial licensure periods and procedures for renewal of licenses may also be established by the commission by rule. A license that is not renewed at the end of the biennium established by the commission shall revert from active to inactive status. An inactive license may be reactivated within 6 months after becoming inactive upon filing a completed reactivation form, payment of the nonrefundable renewal fee, and payment of a reactivation fee equal to the nonrefundable renewal fee. A license that is not reactivated within 6 months after becoming inactive automatically expires.

~~(4) Each license must specify the location for which it is issued and must be conspicuously displayed at that location. If a licensee's principal place of business or branch location changes, the licensee shall notify the office and the office shall endorse the change of location without charge. A licensee may not transact business as a retail installment seller except under the name by which it is licensed. A license issued under this part is not transferable or assignable.~~

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(5) The office may deny an initial application for a license under this part if the applicant or any officer, director, control person, member, partner, or joint venturer ~~person with power to direct the management or policies~~ of the applicant is the subject of a pending criminal prosecution or governmental enforcement action, in any jurisdiction, until conclusion of such criminal prosecution or enforcement action.

Section 44. Subsections (2) through (5) of section 520.52, Florida Statutes, are amended to read:

520.52 Licensees.--

(2) An application for a license under this part must be submitted to the office in such form as the commission may prescribe by rule. The commission may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including his or her full name and any other names by which he or she may have been known, age, social security number, residential history, qualifications, educational and business history, and disciplinary and criminal history. If the office determines that an application should be granted, it shall issue the license for a period not to exceed 2 years. A nonrefundable

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2715 application fee of \$175 shall accompany an initial application
 2716 for the principal place of business and each branch location of
 2717 a sales finance company. An application is considered received
 2718 for purposes of s. 120.60 upon receipt of a completed
 2719 application form as prescribed by commission rule, a
 2720 nonrefundable application fee of \$175, and any other fee
 2721 prescribed by law.

2722 (3) The nonrefundable renewal fee for a sales finance
 2723 company license shall be \$175. Biennial licensure periods and
 2724 procedures for renewal of licenses may also be established by
 2725 the commission by rule. A license that is not renewed at the end
 2726 of the biennium established by the commission shall revert from
 2727 active to inactive status. An inactive license may be
 2728 reactivated within 6 months after becoming inactive upon filing
 2729 a completed reactivation form, payment of the nonrefundable
 2730 renewal fee, and payment of a reactivation fee equal to the
 2731 nonrefundable renewal fee. A license that is not reactivated
 2732 within 6 months after becoming inactive automatically expires.

2733 ~~(4) Each license must specify the location for which it is~~
 2734 ~~issued and must be conspicuously displayed at that location. If~~
 2735 ~~a licensee's principal place of business or branch location~~
 2736 ~~changes, the licensee shall notify the office and the office~~
 2737 ~~shall endorse the change of location without charge. A licensee~~
 2738 may not transact business as a sales finance company except
 2739 under the name by which it is licensed. A license issued under
 2740 this part is not transferable or assignable.

2741 (5) The office may deny an initial application for a
 2742 license under this part if the applicant or any officer,

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director, control person, member, partner, or joint venturer
~~person with power to direct the management or policies~~ of the
 applicant is the subject of a pending criminal prosecution or
 governmental enforcement action, in any jurisdiction, until
 conclusion of such criminal prosecution or enforcement action.

Section 45. Subsections (5), (6), (7), (15), (16), and
 (22) of section 520.61, Florida Statutes, are renumbered as
 subsections (7), (5), (16), (22), (15), and (23), respectively,
 and a new subsection (6) is added to that section to read:

520.61 Definitions.--As used in this act:

(6) "Control person" means an individual, partnership,
corporation, trust, or other organization that possesses the
power, directly or indirectly, to direct the management or
policies of a company, whether through ownership of securities,
by contract, or otherwise. A person is presumed to control a
company if, with respect to a particular company, that person:

(a) Is a director, general partner, or officer exercising
executive responsibility or having similar status or functions;

(b) Directly or indirectly may vote 10 percent or more of
a class of a voting security or sell or direct the sale of 10
percent or more of a class of voting securities; or

(c) In the case of a partnership, may receive upon
dissolution or has contributed 10 percent or more of the
capital.

Section 46. Subsections (2) through (5) of section 520.63,
 Florida Statutes, are amended to read:

520.63 Licensees.--

(2) An application for a license under this part must be

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submitted to the office in such form as the commission may prescribe by rule. The commission may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, residential history, qualifications, educational and business history, and disciplinary and criminal history. If the office determines that an application should be granted, it shall issue the license for a period not to exceed 2 years. A nonrefundable application fee of \$175 shall accompany an initial application for the principal place of business and each application for a branch location of a home improvement finance seller. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of \$175, and any other fee prescribed by law.

(3) The nonrefundable renewal fee for a home improvement finance license shall be \$175. Biennial licensure periods and procedures for renewal of licenses may also be established by the commission by rule. A license that is not renewed at the end

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2799 of the biennium established by the commission shall
 2800 automatically revert from active to inactive status. An inactive
 2801 license may be reactivated within 6 months after becoming
 2802 inactive upon filing a completed reactivation form, payment of
 2803 the nonrefundable renewal fee, and payment of a reactivation fee
 2804 equal to the nonrefundable renewal fee. A license that is not
 2805 reactivated within 6 months after becoming inactive
 2806 automatically expires.

2807 (4) ~~Each license must specify the location for which it is~~
 2808 ~~issued and must be conspicuously displayed at that location. If~~
 2809 ~~a home improvement finance seller's principal place of business~~
 2810 ~~or any branch location changes, the licensee shall notify the~~
 2811 ~~office and the office shall endorse the change of location~~
 2812 ~~without charge.~~ A licensee may not transact business as a home
 2813 improvement finance seller except under the name by which it is
 2814 licensed. A license issued under this part is not transferable
 2815 or assignable.

2816 (5) The office may deny an initial application for a
 2817 license under this part if the applicant or any officer,
 2818 director, control person, member, partner, or joint venturer
 2819 ~~person with power to direct the management or policies~~ of the
 2820 applicant is the subject of a pending criminal prosecution or
 2821 governmental enforcement action, in any jurisdiction, until
 2822 conclusion of such criminal prosecution or enforcement action.

2823 Section 47. Subsection (5) of section 520.994, Florida
 2824 Statutes, is amended to read:

2825 520.994 Powers of office.--

2826 (5) The office shall administer and enforce this chapter.

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2827 The commission has authority to adopt rules pursuant to ss.
 2828 120.536(1) and 120.54 to implement the provisions of this
 2829 chapter. The commission may adopt rules requiring ~~to allow~~
 2830 electronic submission of any form, document, or fee required by
 2831 this chapter if such rules reasonably accommodate technological
 2832 or financial hardship. The commission may prescribe by rule
 2833 requirements and procedures for obtaining an exemption due to a
 2834 technological or financial hardship.

2835 Section 48. Subsections (1) and (4) of section 520.995,
 2836 Florida Statutes, are amended to read:

2837 520.995 Grounds for disciplinary action.--

2838 (1) The following acts are violations of this chapter and
 2839 constitute grounds for the disciplinary actions specified in
 2840 subsection (2):

2841 (a) Failure to comply with any provision of this chapter,
 2842 any rule or order adopted pursuant to this chapter, or any
 2843 written agreement entered into with the office.†

2844 (b) Fraud, misrepresentation, deceit, or gross negligence
 2845 in any home improvement finance transaction or retail
 2846 installment transaction, regardless of reliance by or damage to
 2847 the buyer or owner.†

2848 (c) Fraudulent misrepresentation, circumvention, or
 2849 concealment of any matter required to be stated or furnished to
 2850 a retail buyer or owner pursuant to this chapter, regardless of
 2851 reliance by or damage to the buyer or owner.†

2852 (d) Willful imposition of illegal or excessive charges in
 2853 any retail installment transaction or home improvement finance
 2854 transaction.†

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- 2855 (e) False, deceptive, or misleading advertising by a
2856 seller or home improvement finance seller.+
- 2857 (f) Failure to maintain, preserve, and keep available for
2858 examination, all books, accounts, or other documents required by
2859 this chapter, by any rule or order adopted pursuant to this
2860 chapter, or by any agreement entered into with the office.+
- 2861 (g) Refusal to permit inspection of books and records in
2862 an investigation or examination by the office or refusal to
2863 comply with a subpoena issued by the office.+
- 2864 (h) Criminal conduct in the course of a person's business
2865 as a seller, as a home improvement finance seller, or as a sales
2866 finance company.+~~or~~
- 2867 (i) Failure to timely pay any fee, charge, or fine imposed
2868 or assessed pursuant to this chapter or any rule adopted under
2869 this chapter.
- 2870 (j) Using the name or logo of a financial institution, as
2871 defined in s. 655.005(1), or its affiliates or subsidiaries when
2872 marketing or soliciting existing or prospective customers if
2873 such marketing materials are used without the written consent of
2874 the financial institution and in a manner that would lead a
2875 reasonable person to believe that the material or solicitation
2876 originated from, was endorsed by, or is related to or the
2877 responsibility of the financial institution or its affiliates or
2878 subsidiaries.
- 2879 (k) Payment to the office for a license or permit with a
2880 check or electronic transmission of funds that is dishonored by
2881 the applicant's or licensee's financial institution.
- 2882 (4) It is sufficient cause for the office to take any of

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2883 the actions specified in subsection (2) as to any partnership,
2884 corporation, or association, if the office finds grounds for
2885 such action as to any member of the partnership, as to any
2886 officer or director of the corporation or association, or as to
2887 any control person, partner, or joint venturer ~~person with power~~
2888 ~~to direct the management or policies~~ of the partnership,
2889 corporation, or association.

2890 Section 49. Subsection (4) of section 520.997, Florida
2891 Statutes, is amended to read:

2892 520.997 Books, accounts, and records.--

2893 (4) The commission may prescribe by rule the minimum
2894 information to be shown in the books, accounts, documents, and
2895 records of licensees so that such records will enable the office
2896 to determine compliance with ~~the provisions of~~ this chapter. In
2897 addition, the commission may prescribe by rule requirements for
2898 the destruction of books, accounts, records, and documents
2899 retained by the licensee after completion of the time period
2900 specified in subsection (3).

2901 Section 50. Section 520.999, Florida Statutes, is created
2902 to read:

2903 520.999 Requirements of licensees.--

2904 (1) Each licensee under this chapter shall report, on a
2905 form prescribed by rule of the commission, any change in the
2906 information contained in any initial application form or any
2907 amendment to such application not later than 30 days after the
2908 change is effective.

2909 (2) Each licensee under this chapter shall report any
2910 changes in the partners, officers, members, joint venturers,

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directors, or control persons of any licensee or changes in the
form of business organization by written amendment in such form
and at such time as the commission specifies by rule.

(a) In any case in which a person or a group of persons,
directly or indirectly or acting by or through one or more
persons, proposes to purchase or acquire a controlling interest
in a licensee, such person or group must submit an initial
application for licensure before such purchase or acquisition at
such time and in such form as the commission prescribes by rule.

(b) As used in subsection, the term "controlling interest"
means possession of the power to direct or cause the direction
of the management or policies of a company whether through
ownership of securities, by contract, or otherwise. Any person
who directly or indirectly has the right to vote 25 percent or
more of the voting securities of a company or is entitled to 25
percent or more of its profits is presumed to possess a
controlling interest.

(c) Any addition of a partner, officer, member, joint
venturer, director, or control person of the applicant who does
not have a controlling interest and who has not previously
complied with the provisions of ss. 520.03(2), 520.32(2),
520.52(2), and 520.63(2) shall be subject to such provisions
unless required to file an initial application in accordance
with paragraph (a). If the office determines that the licensee
does not continue to meet licensure requirements, the office may
bring administrative action in accordance with s. 520.995 to
enforce the provisions of this chapter.

(d) The commission shall adopt rules pursuant to ss.

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2939 120.536(1) and 120.54 providing for the waiver of the
 2940 application required by this subsection if the person or group
 2941 of persons proposing to purchase or acquire a controlling
 2942 interest in a licensee has previously complied with the
 2943 provisions of ss. 520.03(2), 520.32(2), 520.52(2), and 520.63(2)
 2944 with the same legal entity or is currently licensed with the
 2945 office under this chapter.

2946 Section 51. Subsection (5) of section 537.009, Florida
 2947 Statutes, is amended to read:

2948 537.009 Recordkeeping; reporting; safekeeping of
 2949 property.--

2950 (5) The commission may prescribe by rule the books,
 2951 accounts, documents, and records, and the minimum information to
 2952 be shown in the books, accounts, documents, and records, of
 2953 licensees so that such records will enable the office to
 2954 determine compliance with the provisions of this act. In
 2955 addition, the commission may prescribe by rule requirements for
 2956 the destruction of books, accounts, records, and documents
 2957 retained by the licensee after completion of the time period
 2958 specified in subsection (3).

2959 Section 52. Paragraph (e) of subsection (2) of section
 2960 559.9232, Florida Statutes, is amended to read:

2961 559.9232 Definitions; exclusion of rental-purchase
 2962 agreements from certain regulations.--

2963 (2) A rental-purchase agreement that complies with this
 2964 act shall not be construed to be, nor be governed by, any of the
 2965 following:

2966 (e) A lease or agreement which constitutes a "retail

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2967 installment contract" or "retail installment transaction" as
 2968 those terms are defined in s. 520.31~~(13)~~ and ~~(14)~~; or
 2969 Section 53. Subsection (3) is added to section 560.105,
 2970 Florida Statutes, to read:
 2971 560.105 Supervisory powers; rulemaking.--
 2972 (3) The commission may adopt rules pursuant to ss.
 2973 120.536(1) and 120.54 requiring electronic submission of any
 2974 forms, documents, or fees required by this code if such rules
 2975 reasonably accommodate technological or financial hardship. The
 2976 commission may prescribe by rule requirements and procedures for
 2977 obtaining an exemption due to a technological or financial
 2978 hardship.
 2979 Section 54. Paragraph (y) is added to subsection (1) of
 2980 section 560.114, Florida Statutes, to read:
 2981 560.114 Disciplinary actions.--
 2982 (1) The following actions by a money transmitter or money
 2983 transmitter-affiliated party are violations of the code and
 2984 constitute grounds for the issuance of a cease and desist order,
 2985 the issuance of a removal order, the denial of a registration
 2986 application or the suspension or revocation of any registration
 2987 previously issued pursuant to the code, or the taking of any
 2988 other action within the authority of the office pursuant to the
 2989 code:
 2990 (y) Payment to the office for a license or permit with a
 2991 check or electronic transmission of funds that is dishonored by
 2992 the applicant's or licensee's financial institution.
 2993 Section 55. Subsection (2) of section 560.121, Florida
 2994 Statutes, is amended to read:

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560.121 Records; limited restrictions upon public access.--

(2) The commission may prescribe by rule the minimum information that must be shown in the books, accounts, records, and documents of licensees for purposes of enabling the office to determine the licensee's compliance with this chapter. In addition, the commission may prescribe by rule requirements for the destruction of books, accounts, records, and documents retained by the licensee after completion of the time period specified in this subsection. Examination reports, investigatory records, applications, and related information compiled by the office, or photographic copies thereof, shall be retained by the office for a period of at least 3 years following the date that the examination or investigation ceases to be active. Application records, and related information compiled by the office, or photographic copies thereof, shall be retained by the office for a period of at least 2 years following the date that the registration ceases to be active.

Section 56. Section 560.126, Florida Statutes, is amended to read:

560.126 Significant events; notice required.--

(1) Unless exempted by the office, every money transmitter must provide the office with a written notice within 30 ~~15~~ days after the occurrence or knowledge of, whichever period of time is greater, any of the following events:

(a) ~~(1)~~ The filing of a petition under the United States Bankruptcy Code for bankruptcy or reorganization by the money transmitter.

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3023 (b)~~(2)~~ The commencement of any registration suspension or
3024 revocation proceeding, either administrative or judicial, or the
3025 denial of any original registration request or a registration
3026 renewal, by any state, the District of Columbia, any United
3027 States territory, or any foreign country, in which the money
3028 transmitter operates or plans to operate or has registered to
3029 operate.

3030 (c)~~(3)~~ A felony indictment relating to the money
3031 transmission business involving the money transmitter or a money
3032 transmitter-affiliated party of the money transmitter.

3033 (d)~~(4)~~ The felony conviction, guilty plea, or plea of nolo
3034 contendere, if the court adjudicates the nolo contendere pleader
3035 guilty, or the adjudication of guilt of a money transmitter or
3036 money transmitter-affiliated party.

3037 (e)~~(5)~~ The interruption of any corporate surety bond
3038 required by the code.

3039 (f)~~(6)~~ Any suspected criminal act, as defined by the
3040 commission by rule, perpetrated in this state against a money
3041 transmitter or authorized vendor.

3042

3043 However, a person does not incur liability ~~no liability shall be~~
3044 ~~incurred by any person~~ as a result of making a good-faith ~~good~~
3045 ~~faith~~ effort to fulfill this disclosure requirement.

3046 (2)(a) Each registrant under this code shall report, on a
3047 form prescribed by rule of the commission, any change in the
3048 information contained in any initial application form or any
3049 amendment thereto not later than 30 days after the change is
3050 effective.

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(b) Each registrant under the code shall report any changes in the partners, officers, members, joint venturers, directors, controlling shareholders, or responsible persons of any registrant or changes in the form of business organization by written amendment in such form and at such time as the commission specifies by rule.

1. In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a licensee, such person or group must submit an initial application for registration as a money transmitter before such purchase or acquisition at such time and in such form as the commission prescribes by rule.

2. As used in this subsection, the term "controlling interest" means possession of the power to direct or cause the direction of the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who directly or indirectly has the right to vote 25 percent or more of the voting securities of a company or is entitled to 25 percent or more of its profits is presumed to possess a controlling interest.

3. Any addition of a partner, officer, member, joint venturer, director, controlling shareholder, or responsible person of the applicant who does not have a controlling interest and who has not previously complied with ss. 560.205 and 560.306 shall be subject to such provisions unless required to file an initial application in accordance with subparagraph 1. If the office determines that the registrant does not continue to meet

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registration requirements, the office may bring administrative action in accordance with s. 560.114 to enforce the provisions of this code.

4. The commission shall adopt rules pursuant to ss. 120.536(1) and 120.54 providing for the waiver of the application required by this subsection if the person or group of persons proposing to purchase or acquire a controlling interest in a registrant has previously complied with the provisions of ss. 560.205 and 560.306 with the same legal entity or is currently registered with the office under this code.

Section 57. Section 560.127, Florida Statutes, is amended to read:

560.127 Control of a money transmitter.--

~~(1)~~ A person has control over a money transmitter if:

(1)(a) The individual, partnership, corporation, trust, or other organization possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to control a company if, with respect to a particular company, that person:

(a) Is a director, general partner, or officer exercising executive responsibility or having similar status or functions;

(b) Directly or indirectly may vote 25 percent or more of a class of a voting security or sell or direct the sale of 25 percent or more of a class of voting securities; or

(c) In the case of a partnership, may receive upon dissolution or has contributed 25 percent or more of the capital. The person directly or indirectly or acting through one

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3107 ~~or more other persons owns, controls, or has power to vote 25~~
 3108 ~~percent or more of any class of voting securities of the money~~
 3109 ~~transmitter, or~~

3110 (2) ~~(b)~~ The office determines, after notice and opportunity
 3111 for hearing, that the person directly or indirectly exercises a
 3112 controlling influence over the activities of the money
 3113 transmitter.

3114 ~~(2) In any case in which a person or a group of persons,~~
 3115 ~~directly or indirectly or acting by or through one or more~~
 3116 ~~persons, proposes to purchase or acquire a controlling interest~~
 3117 ~~in a money transmitter, and thereby to change the control of~~
 3118 ~~that money transmitter, each person or group of persons shall~~
 3119 ~~provide written notice to the office.~~

3120 ~~(a) A money transmitter whose stock is traded on an~~
 3121 ~~organized stock exchange shall provide the office with written~~
 3122 ~~notice within 15 days after knowledge of such change in control.~~

3123 ~~(b) A money transmitter whose stock is not publicly traded~~
 3124 ~~shall provide the office with not less than 30 days' prior~~
 3125 ~~written notice of such proposed change in control.~~

3126 ~~(3) After a review of the written notification, the office~~
 3127 ~~may require the money transmitter to provide additional~~
 3128 ~~information relating to other and former addresses, and the~~
 3129 ~~reputation, character, responsibility, and business~~
 3130 ~~affiliations, of the proposed new owner or each of the proposed~~
 3131 ~~new owners of the money transmitter.~~

3132 ~~(a) The office may deny the person or group of persons~~
 3133 ~~proposing to purchase, or who have acquired control of, a money~~
 3134 ~~transmitter if, after investigation, the office determines that~~

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~~the person or persons are not qualified by reputation,
character, experience, or financial responsibility to control or
operate the money transmitter in a legal and proper manner and
that the interests of the other stockholders, if any, or the
interests of the public generally may be jeopardized by the
proposed change in ownership, controlling interest, or
management.~~

~~(b) The office may disapprove any person who has been
convicted of, or pled guilty or nolo contendere to, a violation
of s. 560.123, s. 655.50, chapter 896, or any similar state,
federal, or foreign law.~~

Section 58. Section 560.205, Florida Statutes, is amended
to read:

560.205 Qualifications of applicant for registration;
contents.--

(1) To qualify for registration under this part, an
applicant must demonstrate to the office such character and
general fitness as to command the confidence of the public and
warrant the belief that the registered business will be operated
lawfully and fairly. The office may investigate each applicant
to ascertain whether the qualifications and requirements
prescribed by this part have been met. The office's
investigation may include a criminal background investigation of
all controlling shareholders, principals, officers, directors,
members, and responsible persons of a funds transmitter and a
payment instrument seller and all persons designated by a funds
transmitter or payment instrument seller as an authorized
vendor. Each controlling shareholder, principal, officer,

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director, member, and responsible person of a funds transmitter or payment instrument seller, unless the applicant is a publicly traded corporation as defined by the commission by rule, a subsidiary thereof, or a subsidiary of a bank or bank holding company organized and regulated under the laws of any state or the United States, shall file a complete set of fingerprints. A fingerprint card submitted to the office must be taken by an authorized law enforcement agency officer. The office shall submit the ~~Such~~ fingerprints ~~must be submitted~~ to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to ~~or~~ the Federal Bureau of Investigation for state and federal processing. The cost of the fingerprint processing may be borne by the office, the employer, or the person subject to the background check. The Department of Law Enforcement shall submit an invoice to the office for the fingerprints received each month. The office shall screen the background results to determine if the applicant meets licensure requirements. The commission may waive by rule the requirement that applicants file a set of fingerprints or the requirement that such fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation.

(2) Each application for registration must be submitted under oath to the office on such forms as the commission prescribes by rule and must be accompanied by a nonrefundable application fee. Such fee may not exceed \$500 for each payment instrument seller or funds transmitter and \$50 for each authorized vendor or location operating within this state. The

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3191 application must contain ~~forms shall set forth~~ such information
3192 as the commission ~~reasonably~~ requires by rule, including, but
3193 not limited to:

3194 (a) The name and address of the applicant, including any
3195 fictitious or trade names used by the applicant in the conduct
3196 of its business.

3197 (b) The history of the applicant's material litigation,
3198 criminal convictions, pleas of nolo contendere, and cases of
3199 adjudication withheld.

3200 (c) A description of the activities conducted by the
3201 applicant, the applicant's history of operations, and the
3202 business activities in which the applicant seeks to engage in
3203 this state.

3204 ~~(d) A list identifying the applicant's proposed authorized~~
3205 ~~vendors in this state, including the location or locations in~~
3206 ~~this state at which the applicant and its authorized vendors~~
3207 ~~propose to conduct registered activities.~~

3208 (d) ~~(e)~~ A sample authorized vendor contract, if applicable.

3209 (e) ~~(f)~~ A sample form of payment instrument, if applicable.

3210 (f) ~~(g)~~ The name and address of the clearing financial
3211 institution or financial institutions through which the
3212 applicant's payment instruments will be drawn or through which
3213 such payment instruments will be payable.

3214 (g) ~~(h)~~ Documents revealing that the net worth and bonding
3215 requirements specified in s. 560.209 have been or will be
3216 fulfilled.

3217 (3) Each application for registration by an applicant that
3218 is a corporation shall contain ~~also set forth~~ such information

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3219 as the commission ~~reasonably~~ requires by rule, including, but
3220 not limited to:

3221 (a) The date of the applicant's incorporation and state of
3222 incorporation.

3223 (b) A certificate of good standing from the state or
3224 country in which the applicant was incorporated.

3225 (c) A description of the corporate structure of the
3226 applicant, including the identity of any parent or subsidiary of
3227 the applicant, and the disclosure of whether any parent or
3228 subsidiary is publicly traded on any stock exchange.

3229 (d) The name, social security number, business and
3230 residence addresses, and employment history for the past 5 years
3231 for each executive officer, each director, each controlling
3232 shareholder, and the responsible person who will be in charge of
3233 all the applicant's business activities in this state.

3234 (e) The history of material litigation and criminal
3235 convictions, pleas of nolo contendere, and cases of adjudication
3236 withheld for each ~~executive~~ officer, each director, each
3237 controlling shareholder, and the responsible person who will be
3238 in charge of the applicant's registered activities.

3239 (f) Copies of the applicant's audited financial statements
3240 for the current year and, if available, for the immediately
3241 preceding 2-year period. In cases where the applicant is a
3242 wholly owned subsidiary of another corporation, the parent's
3243 consolidated audited financial statements may be submitted to
3244 satisfy this requirement. An applicant who is not required to
3245 file audited financial statements may satisfy this requirement
3246 by filing unaudited financial statements verified under penalty

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of perjury, as provided by the commission by rule.

(g) An applicant who is not required to file audited financial statements may file copies of the applicant's unconsolidated, unaudited financial statements for the current year and, if available, for the immediately preceding 2-year period.

(h) If the applicant is a publicly traded company, copies of all filings made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application.

(4) Each application for registration submitted to the office by an applicant that is not a corporation shall contain ~~also set forth~~ such information as the commission ~~reasonably~~ requires by rule, including, but not limited to:

(a) Evidence that the applicant is registered to do business in this state.

(b) The name, business and residence addresses, personal financial statement and employment history for the past 5 years for each individual having a controlling ownership interest in the applicant, and each responsible person who will be in charge of the applicant's registered activities.

(c) The history of material litigation and criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each individual having a controlling ownership interest in the applicant and each responsible person who will be in charge of the applicant's registered activities.

(d) Copies of the applicant's audited financial statements

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for the current year, and, if available, for the preceding 2 years. An applicant who is not required to file audited financial statements may satisfy this requirement by filing unaudited financial statements verified under penalty of perjury, as provided by the commission by rule.

(5) Each applicant shall designate and maintain an agent in this state for service of process.

Section 59. Section 560.207, Florida Statutes, is amended to read:

560.207 Renewal of registration; registration fee.--

(1) Registration may be renewed for a 24-month period or the remainder of any such period without proration following the date of its expiration by furnishing such information as the commission requires by rule, together with the payment of the fees required under subsections (2), (3), and (4), ~~upon the filing with the office of an application and other statements and documents as may reasonably be required of registrants by the commission. However, the registrant must remain qualified for such registration under the provisions of this part.~~

(2) Each renewal of All registration must renewal applications shall be accompanied by a nonrefundable renewal fee not to exceed \$1,000. A registration expires on April 30 of the year in which the existing registration expires, unless the registrant has renewed his or her registration on or before that date. In no event shall a registration be issued for a period in excess of 24 months. The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section ~~All renewal applications must be filed on or after January 1 of the year in~~

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3303 ~~which the existing registration expires, but before the~~
3304 ~~expiration date of April 30. If the renewal application is filed~~
3305 ~~prior to the expiration date of an existing registration, no~~
3306 ~~late fee shall be paid in connection with such renewal~~
3307 ~~application. If the renewal application is filed within 60~~
3308 ~~calendar days after the expiration date of an existing~~
3309 ~~registration, then, in addition to the \$1,000 renewal fee, the~~
3310 ~~renewal application shall be accompanied by a nonrefundable late~~
3311 ~~fee of \$500. If the registrant has not filed a renewal~~
3312 ~~application within 60 calendar days after the expiration date of~~
3313 ~~an existing registration, a new application shall be filed with~~
3314 ~~the office pursuant to s. 560.205.~~

3315 (3) In addition to the renewal fee required under
3316 subsection (2), each registrant must pay ~~Every registration~~
3317 ~~renewal application shall also include~~ a 2-year nonrefundable
3318 registration renewal fee of \$50 for each authorized vendor or
3319 location operating within this state or, at the option of the
3320 registrant, a total 2-year nonrefundable renewal fee of \$20,000
3321 may be paid to renew the registration of all such locations
3322 currently registered at the time of renewal.

3323 (4) A registration may be reinstated only if the renewal
3324 fee and a nonrefundable late fee of \$500 are filed within 60
3325 calendar days after the expiration of the existing registration.
3326 The office shall grant a reinstatement of registration if an
3327 application is filed during the 60-day period, and the
3328 reinstatement is effective upon receipt of the required fees and
3329 any information that the commission requires by rule. If a
3330 registrant does not file an application for reinstatement of the

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3331 registration within the 60 calendar days after expiration of an
 3332 existing registration, the registration expires and a new
 3333 application must be filed with the office pursuant to s.
 3334 560.205.

3335 Section 60. Subsection (1) of section 560.210, Florida
 3336 Statutes, is amended to read:

3337 560.210 Permissible investments.--

3338 (1) A registrant shall at all times possess permissible
 3339 investments with an aggregate market value calculated in
 3340 accordance with United States generally accepted accounting
 3341 principles of not less than the aggregate face amount of all
 3342 outstanding funds transmissions ~~transmitted~~ and ~~outstanding~~
 3343 payment instruments issued or sold by the registrant or an
 3344 authorized vendor in the United States.

3345 Section 61. Subsection (2) of section 560.211, Florida
 3346 Statutes, is amended to read:

3347 560.211 Records.--

3348 (2) The records required to be maintained by the code may
 3349 be maintained by the registrant at any location if, ~~provided~~
 3350 ~~that~~ the registrant notifies the office in writing of the
 3351 location of the records in its application or otherwise by
 3352 amendment as prescribed by commission rule. The registrant shall
 3353 make such records available to the office for examination and
 3354 investigation in this state, as permitted by the code, within 7
 3355 days after receipt of a written request.

3356 Section 62. Section 560.305, Florida Statutes, is amended
 3357 to read:

3358 560.305 Application.--Each application for registration

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3359 must ~~shall~~ be in writing and under oath to the office, in such
3360 form as the commission prescribes. The application must contain
3361 such information as the commission requires by rule, including,
3362 but not limited to ~~shall include the following:~~

3363 (1) The legal name, social security number, and residence
3364 and business addresses of the applicant if the applicant is a
3365 natural person, or, if the applicant is a partnership,
3366 association, or corporation, the name of every partner, officer,
3367 ~~or~~ director, member, controlling shareholder, or responsible
3368 person thereof.

3369 (2) The location of the principal office of the applicant.

3370 (3) The complete address of any other locations at which
3371 the applicant proposes to engage in such activities since the
3372 provisions of registration apply to each and every operating
3373 location of a registrant.

3374 (4) Such other information as the commission or office
3375 reasonably requires with respect to the applicant or any money
3376 transmitter-affiliated party of the applicant; however, the
3377 commission or office may not require more information than is
3378 specified in part II.

3379 Section 63. Subsections (1) and (4) of section 560.306,
3380 Florida Statutes, are amended to read:

3381 560.306 Standards.--

3382 (1) In order to qualify for registration under this part,
3383 an applicant must demonstrate to the office that he or she has
3384 such character and general fitness as will command the
3385 confidence of the public and warrant the belief that the
3386 registered business will be operated lawfully and fairly. The

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3387 office may investigate each applicant to ascertain whether the
 3388 qualifications and requirements prescribed by this part have
 3389 been met. The office's investigation may include a criminal
 3390 background investigation of all controlling shareholders,
 3391 principals, officers, directors, members, and responsible
 3392 persons of a check casher and a foreign currency exchanger and
 3393 all persons designated by a foreign currency exchanger or check
 3394 casher as an authorized vendor. Each controlling shareholder,
 3395 principal, officer, director, member, and responsible person of
 3396 a check casher or foreign currency exchanger, unless the
 3397 applicant is a publicly traded corporation as defined by the
 3398 commission by rule, a subsidiary thereof, or a subsidiary of a
 3399 bank or bank holding company organized and regulated under the
 3400 laws of any state or the United States, shall file a complete
 3401 set of fingerprints. A fingerprint card submitted to the office
 3402 must be taken by an authorized law enforcement agency officer.
 3403 The office shall submit the ~~Such fingerprints must be submitted~~
 3404 to the Department of Law Enforcement for state processing and
 3405 the Department of Law Enforcement shall forward the fingerprints
 3406 to or the Federal Bureau of Investigation for state and federal
 3407 processing. The cost for the fingerprint processing may be borne
 3408 by the office, the employer, or the person subject to the
 3409 background check. The Department of Law Enforcement shall submit
 3410 an invoice to the office for the fingerprints received each
 3411 month. The office shall screen the background results to
 3412 determine if the applicant meets licensure requirements. The
 3413 commission may waive by rule the requirement that applicants
 3414 file a set of fingerprints or the requirement that such

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fingerprints be processed by the Department of Law Enforcement or the Federal Bureau of Investigation.

(4) Each registration application and renewal application must specify the location at which the applicant proposes to establish its principal place of business and any other location, including authorized vendors operating in this state. The registrant shall notify the office of any changes to any such locations. ~~Any registrant may satisfy this requirement by providing the office with a list of such locations, including all authorized vendors operating in this state, not less than annually.~~ A registrant may not transact business as a check casher or a foreign currency exchanger except pursuant to the name under which it is registered.

Section 64. Section 560.308, Florida Statutes, is amended to read:

560.308 Registration terms; renewal; renewal fees.--

(1) Registration may be renewed for a 24-month period, or the remainder of any such period without proration, following the date of its expiration by furnishing such information as the commission requires by rule, together with the payment of the fees required under subsections (2), (3), and (4). Registration pursuant to this part shall remain effective through the remainder of the second calendar year following its date of issuance unless during such calendar year the registration is surrendered, suspended, or revoked.

(2) Each application for renewal of registration must be accompanied by ~~The office shall renew registration upon receipt of a completed renewal form and payment of a nonrefundable~~

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renewal fee not to exceed \$500. A registration expires on
December 31 of the year in which the existing registration
expires, unless the registrant has renewed his or her
registration on or before that date ~~The completed renewal form~~
~~and payment of the renewal fee shall occur on or after June 1 of~~
~~the year in which the existing registration expires.~~

(3) In addition to the renewal fee required by subsection
 (2), each registrant must pay a 2-year nonrefundable
 registration renewal fee of \$50 for each authorized vendor or
 location operating within this state or, at the option of the
 registrant, a total 2-year nonrefundable renewal fee of \$20,000
 may be paid to renew the registration of all such locations
 currently registered at the time of renewal.

(4) ~~Registration that is not renewed on or before the~~
~~expiration date of the registration period automatically~~
~~expires.~~ A renewal ~~application and fee,~~ and a nonrefundable late
 fee of \$250~~,~~ must be filed within 60 calendar days after the
 expiration of an existing registration in order for the
 registration to be reinstated. The office shall grant a
reinstatement of registration if application is filed during the
60-day period, and the reinstatement is effective upon receipt
of the required fees and any information that the commission
requires by rule. If the registrant has not filed an ~~a~~ renewal
 application within 60 calendar days after the expiration date of
 an existing registration, the registration expires and a new
 application must be filed with the office pursuant to s.
 560.307.

Section 65. Subsection (2) of section 560.310, Florida

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3471 Statutes, is amended to read:

3472 560.310 Records of check cashers and foreign currency
3473 exchangers.--

3474 (2) The records required to be maintained by the code may
3475 be maintained by the registrant at any location if, ~~provided~~
3476 ~~that~~ the registrant notifies the office, in writing, of the
3477 location of the records in its application or otherwise by
3478 amendment as prescribed by commission rule. The registrant shall
3479 make such records available to the office for examination and
3480 investigation in this state, as permitted by the code, within 7
3481 days after receipt of a written request.

3482 Section 66. Subsections (2) and (4) of section 560.403,
3483 Florida Statutes, are amended to read:

3484 560.403 Requirements of registration; declaration of
3485 intent.--

3486 (2) A registrant under this part shall renew his or her
3487 intent to engage in the business of deferred presentment
3488 transactions or to act as a deferred presentment provider upon
3489 renewing his or her registration under part II or part III and
3490 shall do so by indicating his or her intent ~~on the renewal form~~
3491 ~~and~~ by submitting a nonrefundable deferred presentment provider
3492 renewal fee of \$1,000, in addition to any fees required for
3493 renewal of registration under part II or part III.

3494 (4) The notice of intent of a registrant under this part
3495 who fails to timely renew his or her intent to engage in the
3496 business of deferred presentment transactions or to act as a
3497 deferred presentment provider on or before the expiration date
3498 of the registration period automatically expires. A renewal

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~~declaration of intent and fee,~~ and a nonrefundable late fee of \$500~~,~~ must be filed within 60 calendar days after the expiration of an existing registration in order for the declaration of intent to be reinstated. The office shall grant a reinstatement of registration if application is filed during the 60-day period, and the reinstatement is effective upon receipt of the required fees and any information that the commission requires by rule. If the registrant has not filed a reinstatement of a renewal declaration of intent within 60 calendar days after the expiration date of an existing registration, the notice of intent expires and a new declaration of intent must be filed with the office.

Section 67. Section 655.935, Florida Statutes, is amended to read:

655.935 Search procedure on death of lessee.--If satisfactory proof of the death of the lessee is presented, a lessor shall permit the person named in a court order for the purpose, or if no order has been served upon the lessor, the spouse, a parent, an adult descendant, or a person named as a personal representative in a copy of a purported will produced by such person, to open and examine the contents of a safe-deposit box leased or co-leased by a decedent, or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor; and the lessor, if so requested by such person, shall deliver:

(1) Any writing purporting to be a will of the decedent, to the court having probate jurisdiction in the county in which the financial institution is located;

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(2) Any writing purporting to be a deed to a burial plot or to give burial instructions, to the person making the request for a search; and

(3) Any document purporting to be an insurance policy on the life of the decedent, to the beneficiary named therein.

No other contents may be removed pursuant to this section and access granted pursuant to this section shall not be considered the initial opening of the safe-deposit box pursuant to s. 733.6065 by a personal representative appointed by a court in this state.

Section 68. Subsections (1) and (2) of section 655.936, Florida Statutes, are amended to read:

655.936 Delivery of safe-deposit box contents or property held in safekeeping to personal representative.--

(1) Subject to the provisions of subsection (3), the lessor shall immediately deliver to a ~~resident~~ personal representative appointed by a court in this state, upon presentation of a certified copy of his or her letters of authority, all property deposited with it by the decedent for safekeeping, and shall grant the ~~resident~~ personal representative access to any safe-deposit box in the decedent's name and permit him or her to remove from such box any part or all of the contents thereof.

(2) If a ~~foreign~~ personal representative of a deceased lessee has been appointed by a court of any other state, a lessor may, at its discretion, after 3 months from the issuance to such ~~foreign~~ personal representative of his or her letters of

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authority, deliver to such ~~foreign~~ personal representative all properties deposited with it for safekeeping and the contents of any safe-deposit box in the name of the decedent if at such time the lessor has not received written notice of the appointment of a personal representative in this state, and such delivery is a valid discharge of the lessor for all property or contents so delivered. A ~~Such foreign~~ personal representative appointed by a court of any other state shall furnish the lessor with an affidavit setting forth facts showing the domicile of the deceased lessee to be other than this state and stating that there are no unpaid creditors of the deceased lessee in this state, together with a certified copy of his or her letters of authority. A lessor making delivery pursuant to this subsection shall maintain in its files a receipt executed by such ~~foreign~~ personal representative which itemizes in detail all property so delivered.

Section 69. Section 655.937, Florida Statutes, is amended to read:

655.937 Access to safe-deposit boxes leased in two or more names.--

(1) Unless ~~When~~ specifically provided in the lease or rental agreement to the contrary, if covering a safe-deposit box is heretofore or hereafter rented or leased in the names of two or more lessees, ~~that~~ access to the safe-deposit box will be granted to either lessee, or to ~~either or the survivor, access to the safe-deposit box shall be granted to:~~

(a) Either or any of such lessees, regardless of whether or not the other lessee or lessees or any of them are living or

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3583 competent, ~~and~~
 3584 (b) Subject to s. 655.933, those persons named in s.
 3585 655.933.
 3586 (c) Subject to s. 655.935, those persons named in s.
 3587 655.935.
 3588 (d) ~~(b)~~ Subject to s. 773.6065, the personal representative
 3589 of the estate of either or any of such lessees who is deceased,
 3590 or the guardian of the property of either or any of such lessees
 3591 who is incapacitated.
 3592 (2) In all cases described in subsection (1), ~~and, in~~
 3593 ~~either such case, the provisions of s. 655.933 apply, and the~~
 3594 signature on the safe-deposit entry or access record, ~~or the~~
 3595 receipt or acquittance, in the case of property or documents
 3596 otherwise held for safekeeping, ~~is~~ is a valid and sufficient
 3597 release and discharge to the lessor for granting access to such
 3598 safe-deposit box or for the delivery of such property or
 3599 documents otherwise held for safekeeping.
 3600 (3) ~~(2)~~ A lessor may not be held liable for damages or
 3601 penalty by reason of any access granted or delivery made
 3602 pursuant to this section.
 3603 (4) The right of access by a co-lessee is separate from
 3604 the rights and responsibilities of other persons who may be
 3605 granted access to a safe-deposit box after the death or
 3606 incapacity of another co-lessee and such right of access is not
 3607 subject to the provisions of s. 655.935 or s. 733.6065 or other
 3608 requirements imposed upon personal representatives, guardians,
 3609 or other fiduciaries.
 3610 (5) After the death of a co-lessee, the surviving co-

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lessee or any other person who is granted access to the safe-
deposit box pursuant to this section may make a written
inventory of the box, which must be conducted by the person
making the request in the presence of one other person as
specified in this section. Each person present shall verify the
contents of the box by signing a copy of the inventory under
penalty of perjury.

(a) If the person making the written inventory is the
surviving co-lessee, the other person may be any other person
granted access pursuant to this section, an employee of the
institution where the box is located, or an attorney licensed in
this state.

(b) If the person making the written inventory is not a
surviving co-lessee, the other person may be a surviving co-
lessee, an employee of the institution where the box is located,
or an attorney licensed in this state.

Section 70. Section 733.6065, Florida Statutes, is amended
to read:

733.6065 Opening safe-deposit box.--

(1) Subject to the provisions of s. 655.936(2), the
initial opening of a the decedent's safe-deposit box that is
leased or co-leased by the decedent shall be conducted in the
presence of any two of the following persons: an employee of the
institution where the box is located, the personal
representative, or the personal representative's attorney of
record. Each person who is present must verify the contents of
the box by signing a copy of the inventory under penalties of
perjury. The personal representative shall file the safe-deposit

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3639 box inventory, together with a copy of the box entry record from
 3640 a date which is 6 months prior to the date of death to the date
 3641 of inventory, with the court within 10 days after the box is
 3642 opened. Unless otherwise ordered by the court, this inventory
 3643 and the attached box entry record is subject to inspection only
 3644 by persons entitled to inspect an inventory under s. 733.604(1).
 3645 The personal representative may remove the contents of the box.

3646 (2) The right to open and examine the contents of a safe-
 3647 deposit box leased by a decedent, or any documents delivered by
 3648 a decedent for safekeeping, and to receive items as provided for
 3649 in s. 655.935 are separate from ~~in addition to~~ the rights
 3650 provided for in subsection (1).

3651 Section 71. For the 2006-2007 fiscal year, the recurring
 3652 sum of \$700,515 is appropriated from the Regulatory Trust Fund
 3653 to the Office of Financial Regulation for the purpose of
 3654 implementing the provisions of s. 494.0033(2)(b), Florida
 3655 Statutes, for third-party administration of the mortgage broker
 3656 test.

3657 Section 72. This act shall take effect October 1, 2006.



State Administration Appropriations Committee

Amendment

①

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 1113

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: State Administration
Appropriations Committee
Representative(s) Lopez-Cantera offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Effective January 1, 2007, subsections (2) and
(4) of section 626.171, Florida Statutes, are amended to read:

626.171 Application for license as an agent, customer
representative, adjuster, service representative, managing
general agent, or reinsurance intermediary.--

(2) In the application, the applicant shall set forth:

(a) His or her full name, age, social security number,
residence address, business address, and mailing address.

(b) Proof that he or she has completed or is in the
process of completing any required prelicensing course.

(c) Whether he or she has been refused or has voluntarily
surrendered or has had suspended or revoked a license to solicit
insurance by the department or by the supervising officials of
any state.

(d) Whether any insurer or any managing general agent
claims the applicant is indebted under any agency contract or

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otherwise and, if so, the name of the claimant, the nature of the claim, and the applicant's defense thereto, if any.

(e) Proof that the applicant meets the requirements for the type of license for which he or she is applying.

(f) The applicant's gender (male or female).

(g) The applicant's native language.

(h) The highest level of education achieved by the applicant.

(i) The applicant's race or ethnicity (African American, white, American Indian, Asian, Hispanic, or other).

(j)-(f) Such other or additional information as the department may deem proper to enable it to determine the character, experience, ability, and other qualifications of the applicant to hold himself or herself out to the public as an insurance representative.

However, the application must contain a statement that an applicant is not required to disclose his or her race or ethnicity, gender, or native language, that he or she will not be penalized for not doing so, and that the department will use this information exclusively for research and statistical purposes and to improve the quality and fairness of the examinations.

(4) An applicant application for a license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary must submit ~~be accompanied by~~ a set of the individual applicant's fingerprints, or, if the applicant is not an individual, by a set of the fingerprints of the sole proprietor, majority owner, partners, officers, and directors, to the department and must pay ~~on a form adopted by rule of the department and accompanied~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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54 by the fingerprint processing fee set forth in s. 624.501.
55 Fingerprints shall be used to investigate the applicant's
56 qualifications pursuant to s. 626.201. The fingerprints shall be
57 taken by a law enforcement agency, designated examination
58 center, or other department-approved entity. The department
59 shall require all designated examination centers to have
60 fingerprinting equipment and to take fingerprints from any
61 applicant or prospective applicant who pays the applicable fee.
62 The department shall not approve an application for licensure as
63 an agent, customer service representative, adjuster, service
64 representative, managing general agent, or reinsurance
65 intermediary if fingerprints have not been submitted.

66 Section 2. Effective January 1, 2007, subsections (1) and
67 (2) of section 626.211, Florida Statutes, are amended to read:

68 626.211 Approval, disapproval of application.--

69 (1) If upon the basis of a completed application for
70 license and such further inquiry or investigation as the
71 department may make concerning an applicant the department is
72 satisfied that, subject to any examination required to be taken
73 and passed by the applicant for a license, the applicant is
74 qualified for the license applied for and that all pertinent
75 fees have been paid, it shall approve the application. The
76 ~~department shall not deny, delay, or withhold approval of an~~
77 ~~application due to the fact that it has not received a criminal~~
78 ~~history report based on the applicant's fingerprints.~~

79 (2) Upon approval of an applicant for license as agent,
80 customer representative, or adjuster who is subject to written
81 examination, the department shall notify the applicant when and
82 where he or she may take the required examination unless the
83 applicant has taken and passed the examination within the 1-year
84 period prior to the date of filing the application.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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85 Section 3. Paragraph (k) of subsection (2) of section
86 626.221, Florida Statutes, is amended to read:

87 626.221 Examination requirement; exemptions.--

88 (2) However, no such examination shall be necessary in any
89 of the following cases:

90 (k) An applicant for license as an adjuster who has the
91 designation of Accredited Claims Adjuster (ACA) from a
92 regionally accredited postsecondary institution in this state,
93 ~~or the designation of Professional Claims Adjuster (PCA) from~~
94 ~~the Professional Career Institute, or Certified Claims Adjuster~~
95 ~~(CCA) from the Association of Property and Casualty Claims~~
96 ~~Professionals~~ whose curriculum has been approved by the
97 department and whose curriculum includes comprehensive analysis
98 of basic property and casualty lines of insurance and testing at
99 least equal to that of standard department testing for the all-
100 lines adjuster license. The department shall adopt rules
101 establishing standards for the approval of curriculum.

102 Section 4. Effective January 1, 2007, section 626.231,
103 Florida Statutes, is amended to read:

104 626.231 Eligibility; application for examination.--

105 (1) No person shall be permitted to take an examination
106 for license until his or her application for examination or
107 application for the license has been approved and the required
108 fees have been received by the department or a person designated
109 by the department to administer the examination.

110 (2) A person required to take an examination for a license
111 may be permitted to take an examination prior to submitting an
112 application for licensure pursuant to s. 626.171 by submitting
113 an application for examination through the department's Internet
114 website. In the application, the applicant shall set forth:

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115 (a) His or her full name, age, social security number,
116 residence address, business address, and mailing address.

117 (b) The type of license that the applicant intends to
118 apply for.

119 (c) The name of any required prelicensing course he or she
120 has completed or is in the process of completing.

121 (d) The method by which the applicant intends to qualify
122 for the type of license if other than by completing a
123 prelicensing course.

124 (e) The applicant's gender (male or female).

125 (f) The applicant's native language.

126 (g) The highest level of education achieved by the
127 applicant.

128 (h) The applicant's race or ethnicity (African American,
129 white, American Indian, Asian, Hispanic, or other).

130
131 However, the application must contain a statement that an
132 applicant is not required to disclose his or her race or
133 ethnicity, gender, or native language, that he or she will not
134 be penalized for not doing so, and that the department will use
135 this information exclusively for research and statistical
136 purposes and to improve the quality and fairness of the
137 examinations.

138 (3) Each application shall be accompanied by payment of
139 the applicable examination fee.

140 Section 5. Subsection (9) is added to section 626.241,
141 Florida Statutes, to read:

142 626.241 Scope of examination.--

143 (9) This section applies to any person who submits an
144 application for license and to any person who submits an

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application for examination prior to filing an application for
license.

Section 6. Section 626.2415, Florida Statutes, is created
to read:

626.2415 Annual report of results of life insurance
examinations.--

(1) No later than May 1 of each year, the department or a
person designated by the department shall prepare, publicly
announce, and publish a report that summarizes statistical
information relating to life insurance agent examinations
administered during the preceding calendar year. Each report
shall include the following information, for all examinees
combined and separately by race or ethnicity, gender, race or
ethnicity within gender, education level and native language:

(a) The total number of examinees.

(b) The percentage and number of examinees who passed the
examination.

(c) The mean scaled scores on the examination.

(d) Standard deviation of scaled scores on the
examination.

(2) No later than May 1 of each year, the department or a
person designated by the department shall prepare and make
available upon request a report of summary statistical
information relating to each operational item on each life
insurance test form administered during the preceding calendar
year. The report shall show, for each operational item, for all
examinees combined and separately for African-American
examinees, white examinees, American Indian examinees, Asian
examinees, Hispanic examinees, and other examinees, the correct-
answer rates and correlations.

(3) The department may provide a testing service provider,

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176 under contract with the department, demographic information
177 received by the department on applications relating to
178 examinations taken to qualify for an insurance agent license if
179 the department requires the provider to review and analyze
180 examination results in conjunction with the race or ethnicity,
181 gender, education level, and native language of examinees.

182 Section 7. Subsection (1) of section 626.251, Florida
183 Statutes, is amended to read:

184 626.251 Time and place of examination; notice.--

185 (1) The department or a person designated by the
186 department shall mail written notice of the time and place of
187 the examination to each applicant for examination and each
188 applicant for license required to take an examination who will
189 be eligible to take the examination as of the examination date.
190 The notice shall be so mailed, postage prepaid, and addressed to
191 the applicant at his or her address shown on the application for
192 license or at such other address as requested by the applicant
193 in writing filed with the department prior to the mailing of the
194 notice. Notice shall be deemed given when so mailed.

195 Section 8. Effective January 1, 2007, subsection (1) of
196 section 626.261, Florida Statutes, is amended to read:

197 626.261 Conduct of examination.--

198 (1) The applicant for license or the applicant for
199 examination shall appear in person and personally take the
200 examination for license at the time and place specified by the
201 department or by a person designated by the department.

202 Section 9. Subsection (1) of section 626.281, Florida
203 Statutes, is amended to read:

204 626.281 Reexamination.--

205 (1) Any applicant for license or applicant for examination
206 who has either:

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(a) Taken an examination and failed to make a passing grade, or

(b) Failed to appear for the examination or to take or complete the examination at the time and place specified in the notice of the department,

may take additional examinations, after filing with the department an application for reexamination together with applicable fees. The failure of an applicant to pass an examination or the failure to appear for the examination or to take or complete the examination does not preclude the applicant from taking subsequent examinations.

Section 10. Effective January 1, 2007, subsections (1) and (3) of section 626.291, Florida Statutes, are amended to read:

626.291 Examination results; denial, issuance of license.--

(1) Within 30 days after the applicant has completed any examination required under s. 626.221, the department or its designee shall provide a score report; and, if it finds that the applicant has received a passing grade, the department shall within such period notify the applicant and issue and transmit the license to which such examination related. If it finds that the applicant did not make a passing grade on the examination for a particular license, the department or its designee shall within this period provide notice to the applicant to that effect and of its denial of the license. For those applicants who have completed the examination and received a passing grade prior to submitting the license application, the department shall promptly issue the license applied for as soon as the department approves the application.

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(3) A passing grade on an examination is valid for a period of 1 year. The department shall not issue a license to an applicant based on an examination taken more than 1 year prior to the date that an application for license is filed. The department shall not deny, delay, or withhold issuance of a license due to the fact that it has not received a criminal history report based on the applicant's fingerprints.

Section 11. The sums of \$158,995 in recurring funds and \$120,069 in nonrecurring funds are appropriated from the Insurance Regulatory Trust Fund in the Department of Financial Services for the 2006-2007 fiscal year for the purposes of funding the provisions of this act, and three full-time equivalent positions with \$103,285 in associated salary rate are authorized.

Section 12. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to insurance agents; amending s. 626.171, F.S.; providing additional requirements for applications for certain licenses; requiring applicants to submit fingerprints and pay a processing fee; providing for fingerprints to be taken by a designated examination center; requiring the Department of Financial Services to require designated examination centers to have fingerprinting equipment and take fingerprints; prohibiting the department from approving licensure applications without submitted fingerprints; amending s.

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Amendment No. (for drafter's use only)

626.211, F.S.; deleting a prohibition against the department denying, delaying, or withholding approval of applications lacking a criminal history report; revising circumstances under which the department must notify an applicant about examinations; amending s. 626.221, F.S.; expanding the authorized adjuster designations for exemptions from adjuster license examinations; amending s. 626.231, F.S.; providing authorization and procedures for applying on the department's Internet website to take a licensure examination prior to applying for licensure; specifying required application information; requiring an application disclosure statement; requiring payment of an examination fee with an application; amending s. 626.241, F.S.; providing for application of certain examination provisions to certain persons; creating s. 626.2415, F.S.; requiring the department to annually prepare, publicly announce, and publish reports of certain examination statistical information; providing report requirements; authorizing the department to provide certain contracted testing service providers with certain demographic application information under certain circumstances; amending s. 626.251, F.S.; requiring the department to provide certain information to examination applicants; amending s. 626.261, F.S.; specifying required conduct for examination applicants; amending s. 626.281, F.S.; applying reexamination provisions to examination applicants; amending s. 626.291, F.S.; requiring the department to issue a license for certain applicants after the department approves the application; specifying a period of validity of a passing examination grade; prohibiting the department from issuing a license based on

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299 an examination taken more than one year prior to filing an
300 application; providing appropriations; authorizing
301 additional positions; providing effective dates.